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Supreme Court of the United States

OCTOBER TERM, 1963

No. 7

JERRY R. ENGLAND, ET AL., APPELLANTS,

vs.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

FILED SEPTEMBER 19, 1961

PROBABLE JURISDICTION NOTED FEBRUARY 18, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 32

JERRY R. ENGLAND, ET AL., APPELLANTS,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JERRY R. ENGLAND, D.C., THOMAS W. MILLER, D.C., WILLIAM S. BOYD, D.C., MELVIN D. EASTMAN, D.C., ROBERT HENRY WILKINSON, D.C., All residents of the Parish of Calcasiue, Louisiana;

PAUL SHURTLEFF, D.C., JAMES E. COLLINS, D.C., ERWIN JEROME DIXEMAN, D.C., PAUL J. ADAMS, D.C., All residents of the Parish of Lafayette, Louisiana;

GEORGE DANDO, D.C., M. R. METZEL, D.C., DANIEL J. ARTON, D.C., All residents of the Parish of Iberia, Louisiana;

FLOYD WESLEY SAFFORD, D.C., WILLIE SACKS, D.C., STANFORD G. BEATTY, D.C., Ph.C., STANFORD G. BEATTY, JR., D.C., All residents of the Parish of Orleans, Louisiana;

DONALD E. RINGQUIST, D.C., A resident of the Parish of Vermilion, Louisiana;

HUBERT G. ARNOLD, D.C., A resident of the Parish of St. Mary, Louisiana;

ARCHIE V. BROWNING, JR., D.C., JOHN W. BOOTH, D.C., All residents of the Parish of East Baton Rouge, Louisiana;

O. S. HOLLIDAY, D.C., Ph.C., JAMES C. STEPHENSON, D.C., All residents of the Parish of Beauregard, Louisiana;

JOHN E. FLYNN, D.C., R. F. WELLER, D.C., All residents of the Parish of Terrebonne, Louisiana;

[fol. 2]

R. L. BYRON, D.C., CORWIN HENNEMAN, D.C., GERRY E. HINTON, D.C., All residents of the Parish of St. Tammany, Louisiana;

B. D. MOORING, JR., D.C., GLEN GILCHRIST, D.C., KEITH E. SHAW, D.C., E. J. NOSSER, D.C., All residents of the Parish of Caddo, Louisiana;

JULIAN EDWARD BANKER, D.C., A resident of the Parish of Jefferson Davis, Louisiana;

A. P. SIPES, D.C., HAROLD B. KARAS, D.C., All residents of the Parish of Webster, Louisiana;

H. C. SLOAT, D.C., A resident of the Parish of Morehouse, Louisiana;

ROGER C. FARMER, D.C., A resident of the Parish of Acadia, Louisiana;

D. N. GUNN, D.C., A resident of the Parish of St. Charles, Louisiana;

ERIC L. LENSGRAF, D.C., DANIEL L. BRYANT, D.C., All residents of the Parish of Tangipahoa, Louisiana; Plaintiffs,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, and RHETT MCMAHON, President, Louisiana State Board of Medical Examiners, and EDWIN LAWSON, Secretary, Louisiana State Board of Medical Examiners, Defendants.

[fol. 3]

COMPLAINT—Filed May 23, 1957

To the Honorable, The United States District Court in and for the Eastern District of Louisiana, Baton Rouge Division:

I.

Jurisdiction

(a) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, this being a Civil Action in Equity that arises under the Constitution and Laws of the United States, and Title 42, United States Code, Section 1981 and 1983, this being an action in which citizens of the United States contend that they have been, are now, and threaten to continue to be denied of rights, privileges and immunities secured by the Constitution of the United States and of the full and equal benefit of pertinent laws and are thereby deprived of their civil rights

as citizens of Louisiana and of the United States in violation of the Constitution and Laws of the United States.

(b) The jurisdiction of this Court is further invoked under Title 28, United States Code, Section 1343 (3), this being an action for the redress of the deprivation, under color of law, of rights, privileges and immunities secured to them as citizens of the United States by the Constitution and Laws of the United States.

II.

Injunctive Relief

The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 2281 and 2284, this being an action for injunctive relief, both temporary and permanent to enjoin and restrain the enforcement, operation or execution of statutes and certain Orders, Rules, Resolutions or Regulations promulgated and issued by and are to be promulgated and issued by an administrative agency, Board, and instrumentality of the State of Louisiana pur- [fol. 4] suant to or in purported reliance upon the Statutes complained of and set forth more fully hereinafter.

III.

Declaratory Judgment

This is a proceeding pursuant to Title 28, United States Code, Section 2201 and 2202, for a Declaratory Judgment to determine and define the legal rights and relations of plaintiffs in the subject matter of this controversy and for a final adjudication of all matters in actual controversy between the parties to this cause, to-wit: The questions:

(a) Whether the provisions of Louisiana Revised Statutes of 1950, Title 37, Section 1261, et seq., deny plaintiffs their rights, privileges and immunities as citizens of the United States and the equal protection of laws secured to them by the Fourteenth Amendment of the Constitution of the United States or Rights and Privileges secured to them by Section 1981 and 1983 of Title 42, United States Code, and are for these reasons unconstitutional and void?

(b) Whether the acts and deeds of defendants, or either of them, while acting or purporting to act pursuant to or under color of the said law of Louisiana (L.R.S. Title 37, Section 1261 et seq.) of denying and intending to deny to plaintiffs solely because of the professional class or group to which they belong, of their rights and privileges to practice their professional skill and learning in the science of chiropractic, by the institution or threatened institution against plaintiffs of injunction proceedings and criminal proceedings in the State Courts of Louisiana, by the exactions of fines and the performance of other arbitrary acts and schemes designed to deprive plaintiffs of said rights and privileges, in purported reliance on said State Law complained of herein, while permitting these rights and privileges to others, where there are no distinctive circumstances or sanction of law bearing reasonable rela-
[fol. 5] tion to the pretended object of said State Law or the discrimination practiced, between plaintiffs on the one hand and these others, so as to justify the discrimination practiced against plaintiffs, deny to plaintiffs their rights, privileges and immunities secured to them as citizens of the United States or the equal protection of laws secured to them by the Fourteenth Amendment of the Constitution of the United States, or rights and privileges secured to them by Section 1981 and 1983 of Title 42, United States Code and are for those reasons, unconstitutional and void?

IV.

Facts

1. Plaintiffs allege that they are, each of them, adult citizens of the United States and of the State of Louisiana; that they are, each of them, holders of a diploma of a school in good standing teaching the healing arts, to-wit: the Science of Chiropractic. (See Exhibits 1 through 32)

2. Plaintiffs allege that the defendant, Louisiana State Board of Medical Examiners, was created by Act of the Louisiana Legislature (Acts of 1914 No. 56 as amended by Act 54 of 1918, now cited as Title 37, Section 1261, et seq. of the 1950 Revised Statutes of Louisiana, sometimes here-

inafter referred to as the Medical Practice Act) pursuant to Article 6, Section 12, of the Constitution of Louisiana.

3. The defendant, Louisiana State Board of Medical Examiners, is a body politic and corporate with powers to sue and defend suits in all matters relating to the Practice of Medicine, as that term is defined by said law, in the State of Louisiana. It is hereby sued in its corporate name and capacity as an instrument of the State of Louisiana.

4. Plaintiffs allege the defendants, Rhett McMahon and Edwin H. Lawson, are the duly qualified and nominated [fol. 6] and acting President and Secretary respectively of the defendant, Louisiana State Board of Medical Examiners; that they are each of them citizens of the United States and of the State of Louisiana and subject to the jurisdiction of this Court; that they are each of them agents and administrative officers of the State of Louisiana with power and authority to execute and enforce the Provisions of Louisiana Revised Statutes Title 37, Section 1261, et seq.; that they hold said offices and perform official duties and functions for the State of Louisiana under said Statutory Provisions and they are each of them sued in their official capacities.

* * * * * * *

[fol. 7] V.

Plaintiffs allege that over the years the Courts of Louisiana have so construed the foregoing Statutory Provisions as to include Chiropractors as Practitioners of Medicine, Surgery and Midwifery within the scope of the definition thereof, and as not denying to Chiropractors their rights, privileges and immunities as citizens of the United States, irrespective of the result that as a matter of law and of fact, plaintiffs' property, rights and privileges and immunities are thereby abridged and denied, as is hereinafter shown, said construction appearing more fully in the following reported cases, wherein the Louisiana State Board of Medical Examiners was plaintiff, to-wit:

Cronk, 157 La. 321, 102 So. 415; Fife, 162 La. 681, 111 So. 58; Beatty, 220 La. 1, 55 So. 2d 761, McHenry,

222 La. 984, 64 So. 2d 242, transferred to Court of Appeals, Second Circuit and decided by that Court, 69 So. 2d 592; Tackett, 71 So. 2d 137; Booth, 76 So. 2d 15; Fisher, 76 So. 2d 56; Weller, 77 So. 2d 166; Barber, 78 So. 2d 60; Martindale, 83 So. 2d 544; Adams, 84 So. 2d 282; Daras, 85 So. 2d 354; Wimberly, 85 So. 2d 679, and Mooring, 86 So. 2d 641.

Plaintiffs allege that as a matter of law; Louisiana Revised Statute of 1950 R.S. 37:1261, et seq., is unconstitutional, null, void and of no effect, because said statute violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that said Act is discriminatory, arbitrary, and an unreasonable exercise of the police powers of the State of Louisiana, having no rationale and not being germane or having a reasonable relation to its pretended object, but being a mere subterfuge and/or being used as a mere subterfuge, for the suppression of Chiropractors, thus constituting a taking of property with-[fol. 8] out due process of law and an unreasonable denial of the equal protection of the law and of the civil rights, privileges and immunities of your plaintiffs herein contrary to Section 1981 and 1983 of Title 42, United States Code and the Fourteenth Amendment to the United States Constitution.

VI.

To illustrate, plaintiffs assert that under the broad and sweeping terms of the Statute complained of herein, all persons holding themselves out to the public as being engaged in the business of relieving, diagnosing, treating, curing, any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in a human being other than himself is engaged in the Practice of Medicine; therefore, necessarily included within said definition are dentists, osteopaths, nurses, chiropodists, optometrists, homeopaths, pharmacists, midwives (by express inclusion) and opticians. Plaintiffs allege that of these midwives, dentists, pharmacists and osteopaths, are by the very terms of said Statute exempt from the provisions thereof, and the remaining named groups are as a matter of practice exempt from the provisions of said Statute.

VII.

Plaintiffs aver that there are no distinctive circumstances, bearing reasonable relation to the discrimination imposed between Chiropractors on the one hand who, alone, except for the alleopaths, are subject to the oppressive provisions of said Statute, and the exempted professions or groups of persons on the other hand, to justify said discrimination; that the discrimination herein complained of constitutes special restrictions on persons engaged in the same business, namely the practice of medicine within the contemplation of the Statute, all of which constitutes a taking of property without due process of law, and a denial of the equal protection of laws and of the civil rights privileges and immunities of plaintiffs herein as guaranteed to them as citizens of the United States under the provisions of the [fol. 9] Fourteenth Amendment of the Constitution of the United States and Section 1981 and 1983 of Title 42 of the United States Code.

VIII.

Plaintiffs further allege that the law complained of herein is so framed as not to extend to and embrace equally all persons who are or may be in like situations or circumstances and the classification is not natural and reasonable but is arbitrary and capricious. For a specific example, in addition to the foregoing, plaintiffs allege that Act 91 of 1932 (R.S. 37:1111) defines Osteopathy as:

> "The treatment of disease, infirmity, defects, deformity, ailment, or injury of a human being, without the use of drugs or medicine, except antiseptics and anodynes locally applied by manipulations applied to the nerve centers, bones, muscles or ligaments."

Whereas the Supreme Court of Louisiana in the Cronk case, supra, expressly held that the science of Chiropractic was:

> "Chiropractic is defined in the catalogue of the Palmer School of Chiropractic as the philosophy, science and art of things natural, and a system of adjusting the

subluxated vertebrae of the spinal column by hand, for the restoration of health. The dean of the faculty of the Palmer School of Chiropractic testified on the trial of this case as follows:

'The theory of Chiropractic is that the subluxation produces pressure upon nerves which produce abnormal conditions on the tissues of the body; and by the adjustment of this subluxation the pressure is relieved, normal impulses are allowed to flow through these nerves, and natural forces of the body do the rest.'"

As demonstrably appears from a comparison of the legal definition of osteopathy and the Louisiana Supreme Court's acknowledged definition of the science of Chiropractic, the practice of the Science of Chiropractic necessarily falls within the scope of the Practice of Osteopathy; however, Osteopaths are expressly excluded from the provisions of the Statute complained of herein and Chiropractors as a matter of practice and of interpretation by the Courts of Louisiana, are subjected to the provisions of said statute, [fol. 10] thus demonstrating that the classification imposed or created by the Medical Practice Act is not natural and reasonable, but is arbitrary and capricious and therefore the Act is unconstitutional.

IX.

Plaintiffs further allege that while the act complained of herein was enacted in the apparent exercise of the police powers of the State of Louisiana, by its very terms and as a matter of practice it permits an overwhelming majority of persons engaged in the actual practice of medicine within the definition, intent and meaning of the "Practice of Medicine" as set out in said Statute, (e.g. dentists, osteopaths, nurses, chiropodists, optometrists, homeopaths, pharmacists, midwives, and opticians, etc.) to practice medicine in the State of Louisiana, without in any way complying with or conforming to the provisions of said act relative to the qualification requirements thereof, thus conclusively illustrating that said act contains a mere pretense of promoting or protecting the public health, public

morals, and/or public safety and has no real or reasonable relation to its pretended object and is, therefore, an abuse of the police powers of the State of Louisiana and it thereby invades and suppresses the fundamental rights and privileges of plaintiffs herein and is therefore null, void and of no effect.

X.

Plaintiffs further allege that said statute further abridges their property rights, privileges and immunities in that it confers arbitrary powers on the members of the Louisiana State Board of Medical Examiners in the respect of vesting said members with plenary and arbitrary powers to determine the qualifications of those seeking to become candidates to stand examination before said Board; that said power, vested in the members of said Board, is made arbitrary because it is not controlled by any fixed rule or standard but on the contrary, said members are vested [fol. 11] with the unrestrained power to say who is worthy and who is unworthy of the right of standing an examination before said Board, and of practicing medicine in the State of Louisiana; that said right to practice medicine may be denied to a citizen of the State of Louisiana and of these United States accordingly as the whim, caprice and prejudice of the members of the said Board may dictate.

XI.

Plaintiffs further allege that in the exercise of this arbitrary power, vested in the members of said Board, the said Louisiana State Board of Medical Examiners has in fact acted arbitrarily and by conspiracy and other arbitrary designs has adopted the arbitrary practice of systematically excluding chiropractors as candidates eligible to stand an examination before the said Board, as a condition precedent to obtaining the required certificate of eligibility to practice medicine in the State of Louisiana, regardless of the learning, ability and scholastic achievement of said chiropractors and has thus systematically and arbitrarily frustrated and deprived them of their property rights, privileges and immunities as citizens of the United States. (See Exhibit No. T-1)

XII.

Plaintiffs allege that the members of the defendant board, and therefore the defendant board itself, defendant McMahon and defendant Lawson are biased and uncompromisingly prejudiced against plaintiffs and all chiropractors of Louisiana; that said defendants were recommended to the Governor of the State of Louisiana for membership on the Louisiana State Board of Medical Examiners by the Louisiana State Medical Society, because of their loyalty to the said Louisiana State Medical Society and their capacity to articulate and enforce the wishes, collective purpose and intent of the membership of the Louisiana State Medical Society; that they are members of said Louisiana [fol. 12] State Medical Society and are in spiritual bondage thereto; that the said Louisiana State Medical Society has heretofore, does, and threatens to continue to defame, degrade, depredate, slander, hate, abuse and injure all chiropractors in Louisiana by word of mouth, persuasion of speech, subtlety of designs, and by combination and conspiracy of effort; that said Louisiana State Medical Society and the members thereof have heretofore, do now, and threaten to continue to organize and initiate campaigns on a state-wide level, through the media of radio, newspapers and personal contacts, against all chiropractors of Louisiana, designed to slander, defame, injure and undermine all chiropractors by promoting, giving circulation to and expressing statements and propaganda to the effect that chiropractors are quacks, cultists, charlatans and detrimental to the health of the general public and that chiropractic is a medical fraud; that said society and members thereof have made organized efforts to enact legislation designed to impose penalties against chiropractors of such gravity as to result in the incarceration of chiropractors in the state penitentiary; that they have referred to Louisiana Legislators who have voiced an inclination to enact chiropractic legislation as their enemies; that the members of the Louisiana State Board of Medical Examiners, the president and secretary thereof, share and subscribe to these views, designs, and intentions; plaintiffs further allege that they have been informed, believe and, therefore, state that

defendant Edwin Lawson has heretofore signed literature and propaganda of the nature and type herein before mentioned; that because of the hostility and prejudice of the members of the Louisiana State Medical Society, and of the defendants herein, plaintiffs and other chiropractors of Louisiana are unable to receive a fair and equal treatment by the Louisiana State Medical Board or to receive fair and equal application of the laws of the State of Louisiana which are administered by the Louisiana State [fol. 13] Board of Medical Examiners and the members and officers thereof; plaintiffs aver that thereby their rights, privileges and immunities as citizens of the United States are denied them as a matter of administration. (See Exhibits B-1A to B-17)

XIII.

Plaintiffs further allege that whereas the Statute complained of herein provides that a person applying to stand an examination before the Louisiana State Board of Medical Examiners shall present a diploma from a college in good standing of any sect teaching medicine or the healing arts and whereas plaintiffs herein do have a diploma from a college in good standing teaching the healing arts, to-wit: the Science of Chiropractic, (See Exhibits 1 to 32) the said Louisiana State Board of Medical Examiners acting through its officers and agents has heretofore (See Exhibit T-1), do now and threatens to continue (See Exhibits B-1A to B-17) to refuse to recognize and accept said diploma, but on the contrary whimsically, arbitrarily and capriciously treat said diploma as non-existent and by this device and arbitrary conduct deprive and arbitrarily deny all chiropractors, including your plaintiffs herein, of the right to stand an examination before the Louisiana State Medical Board of Examiners for the purpose of securing a certificate to practice medicine in the State of Louisiana; plaintiffs aver that the chiropractic schools from which they have graduated are schools in good standing in the teaching of the healing arts; for example, plaintiffs aver that the Palmer School of Chiropractic requires a total of 4,485 class hours of professional studies whereas Johns Hopkins Medical

School requires 3,397 class hours of professional studies. (See Exhibit D-1 to D-3C)

XIV.

Plaintiffs further aver that the Louisiana State Board of Medical Examiners, acting through its officers and agents, has, does and threatens to continue to arbitrarily discriminate against chiropractors herein by inaugurating and maintaining the policy of recognizing only such schools, as schools in good standing teaching the healing arts, as are [fol. 14] approved by the Association of American Medical Colleges or the council on Medical Education and Hospitals of the American Medical Association without regard to the academic standing of any other college teaching the healing arts. (See Exhibit T-1) Plaintiffs further allege that said Board has, does and threatens to continue to promote and adopt the policy and enforce the same that only those persons recommended by those colleges namely, the colleges approved by the Council on Medical Education and Hospitals of the American Medical Association, are persons of good moral character. (See Exhibit T-1)

XV.

Plaintiffs aver that the Louisiana State Board of Medical Examiners has heretofore, does and threatens to continue to invoke the provisions of the Statute complained of herein as a means of enjoining plaintiffs from exercising their rights and privileges as citizens of the United States and for purposes of imposing fines and penalties on plaintiffs and all chiropractors in the State of Louisiana and by their efforts have caused to be established in the State of Louisiana by the Courts of Louisiana, a rule of law subjecting plaintiffs and all chiropractors to the provisions of the Statute complained of herein; that the alleged basis used to obtain the injunctions and impose fines and forfeitures on your plaintiffs herein and all chiropractors, is that plaintiffs and all chiropractors in Louisiana do not possess a certificate from the Louisiana State Board of Medical Examiners; plaintiffs aver, however, that their failure to have

such a certificate is the result of the arbitrary and discriminatory acts and deeds of the Louisiana State Board of Medical Examiners and the members thereof, in that said members, officials, and agents of said Board have conspired, to and threaten to continue to conspire together to deprive plaintiffs of said certificate by arbitrarily refusing to permit plaintiffs to stand and take the required examination necessary to make them eligible to receive such a certificate; [fol. 15] thus defendants are empowered, by virtue of the arbitrary provisions of the Statute complained of, and by virtue of their discriminatory exercise of those provisions, to create a legal entrapment to ensnare plaintiffs and deny them of their rights, privileges and immunities safeguarded to them by the Fourteenth Amendment to the United States Constitution and Section 1981 and 1983 of Title 42 of the United States Code. (See Exhibit T-1)

XVI.

Plaintiffs aver that the statute complained of herein further invests defendants with arbitrary powers in the determination of whether or not an applicant has successfully passed the examination called for, by providing that said examination shall be "satisfactory to said Board"; that said Statute fails to provide for rules, standards and criteria by which such a determination impartially may be made, thus investing said Board with unconstitutionally arbitrary powers.

XVII.

Plaintiffs further allege that because of the inveterate antagonism of the defendants herein toward plaintiffs, even if plaintiffs were permitted to take the required examination, under no conceivable circumstances would the defendant Board and members thereof ever concede or certify that plaintiffs had "satisfactorily" passed said examination and thus become eligible to practice their profession, that, therefore, said statute and the acts and deeds of the defendants herein and members of the said Board operate to deprive and deny plaintiffs of their rights, privileges and immunities contrary to the Fourteenth Amend-

ment of the United States Constitution and Section 1981 and 1983 of Title 42 of the United States Code.

XVIII.

Plaintiffs further aver that to subject them to the provisions of the Statute complained of herein and/or compel [fol. 16] them to take an examination in the subjects mentioned by said statute does not reasonably subserve or secure the public health, public morals or public good of the State of Louisiana and, therefore, said Statute is an arbitrary exercise of the police powers and operates to deny plaintiffs of their rights, privileges and immunities as herein aforesaid; alternatively plaintiffs allege, even if the contrary should appear, that is, even if the public health is secured or promoted by compelling plaintiffs herein to stand such an examination, the fact that all other persons or groups of persons, other than alleopaths, who engage in the practice of medicine within the definition of the statute complained of herein are exempt from the provisions of said Act and from the taking of said examination, constitutes an arbitrary discrimination against plaintiffs and places a greater burden on plaintiffs than on others similarly situated (e.g. dentists, osteopaths, nurses, chiropodists, optometrists, homeopaths, pharmacists, midwives, opticians, etc.) and thus deprives them of their rights, privileges and immunities guaranteed by the Fourteenth Amendment of the United States Constitution and Section 1981 and 1983 of Title 42 of the United States Code.

XIX.

Plaintiffs allege that the defendants, Rhett McMahon and Edwin H. Lawson, while acting in their respective official capacities as set forth more fully herein before, and the members of the defendant Board, and the agents, attorneys, employees and servants of said State Board have drafted resolutions authorizing the prosecution in the State Courts of Louisiana of some or all of the plaintiffs herein, have actually prosecuted in the State Courts of Louisiana some of plaintiffs herein, and have thereby sought to obtain and intend to obtain injunctions, fines and

forfeitures against plaintiffs herein and thereby intend to prohibit under penalty of imprisonment the plaintiffs herein from practicing their professional skills, all in purported reliance on said Act complained of herein and only [fol. 17] because plaintiffs are chiropractors; that plaintiffs are now and threaten to continue to be greatly harmed, damaged, imprisoned and injured by the illegal, wrongful, knowing and purposeful acts of the defendants, and each of them, and they have no plain, adequate or efficient remedy at law to redress the wrongful, knowing and purposeful acts of the defendants other than this action for Declaratory Judgment and Injunctive relief; that any other remedy to which they could be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause plaintiffs irreparable harm and injury and occasion undue hardship, vexation and delay.

XX.

Plaintiffs further allege that unless this Honorable Court do issue a Temporary Restraining Order immediately and without a hearing, enjoining, restraining and prohibiting the defendants, Louisiana State Board of Medical Examiners, Rhett McMahon, President thereof, and Edwin Lawson, Secretary thereof, and its agents, servants and employees or successors in office, and those in concert with them, from denying or depriving plaintiffs or any of them their rights and privileges as citizens of the United States and of the State of Louisiana, or the equal protection of laws secured to them by the Constitution and Laws of the United States or their civil rights, on the sole basis or classification of Chiropractors, or from making any other distinction as to them because they are Chiropractors, or from enforcing or executing the provisions of R.S. 37:1261, et seq., or from instituting or maintaining all actions at law or in equity, civil or criminal, now pending in any of the Courts of the State of Louisiana and heretofore commenced by them or from commencing the same hereafter against plaintiffs under or pursuant to the terms and conditions of the Statute complained of in these proceedings and further enjoining them from taking any further or other actions,

civil or criminal in any Court in pursuance of said Statute, in connection with the enjoyment and exercise of the rights [fol. 18] and privileges and and immunities of plaintiffs anent their professional skills and capacities or opportunities and privileges, plaintiffs will suffer immediate and irreparable injury, harm, damage, imprisonment, forfeitures and fines; that, furthermore, said Temporary Restraining Order is necessary in the interests of justice for the purpose of maintaining the status quo relative to the operation, enforcement and execution of the statute complained of herein, until such time as this Honorable Court may determine the issues presented hereby, after full hearing and an opportunity afforded plaintiffs to furnish extrinsic proof of the substantial averments of the complaint.

Prayer

Wherefore, the premises considered, petitioners respectfully pray, that upon the filing of this complaint, as may appear fitting and proper to the Court:

1. That a statutory three-judge District Court be convened pursuant to Sections 2281 and 2284 of Title 28, United States Code;

2. That a Temporary Restraining Order do issue immediately and without a hearing, enjoining, restraining and prohibiting the defendants, Louisiana State Board of Medical Examiners, Rhett McMahon, President thereof, and Edwin Lawson, Secretary thereof, and its agents, servants and employees or successors in office, and those in concert with them, from denying or depriving plaintiffs or any of them their rights and privileges as citizens of the United States and of the State of Louisiana, or the equal protection of laws secured to them by the Constitution and Laws of the United States or their civil rights, on the sole basis or classification of chiropractors, or from making any other distinction as to them because they are chiropractors or from enforcing or executing the provisions of R.S. 37:1261, et seq., or from instituting or maintaining all actions at law, or in equity, civil or criminal, now pending in any of the courts of the State of Louisiana and heretofore commenced

[fol. 19] by them or from commencing the same hereafter against plaintiffs under or pursuant to the terms and conditions of the Statute complained of in these proceedings and further enjoining them from taking any further or other actions, civil or criminal in any court in pursuance of said Statute, in connection with the enjoyment and exercise of the rights, privileges and immunities of plaintiffs anent their professional skills and capacities or opportunities and privileges.

3. That this cause be advanced on the Docket of this Court and set for a speedy hearing according to law and upon such preliminary hearing that a Preliminary Injunction in the nature and substance of the Temporary Restraining Order herein prayed for do issue, enjoining, restraining and prohibiting said defendants, their agents, servants, employees or successors in office to the extent, nature and form of said Temporary Restraining Order herein prayed for.

4. That upon final hearing of this cause on its merits, this Honorable Court will:

a. Enter a final judgment and decree that will declare and define the legal rights and relations of the parties in the subject matter in controversy.

b. Enter a final judgment, order and decree that will declare that Act 56 of 1914, as amended by Act 54 of 1918, now cited as Title 37, Section 1261, et seq., of the Louisiana Revised Statutes of 1950, and all resolutions, rules and regulations of the Louisiana State Board of Medical Examiners adopted pursuant thereto that require, permit or sanction the enforcement of said Statute and rules and regulations against petitioners herein in connection with their rights and privileges to practice the science of chiropractic, are unconstitutional and void for the reason that, because of the innate quality of the statute complained of or of the intentional, [fol. 20] knowing and purposeful acts, deeds and designs of defendants in the administration of the provisions thereof, they deny and deprive plaintiffs their rights and privileges as citizens of the United States

and the equal protection of laws secured to them by the Constitution and Laws of the United States, and their civil rights as secured by Sections 1981 and 1983, Title 42, United States Code.

c. Enter a permanent injunction that will enjoin and restrain the defendant, the Louisiana State Board of Medical Examiners, a corporation and its president, Rhett McMahon, and its secretary, Edwin Lawson, and its agents, servants and employees and their successors in office and all persons in concert with them forever from executing or enforcing against plaintiffs any of the provisions of the said Statute of the State of Louisiana or any rule or regulation or resolution or any order or orders made or issued pursuant thereto that require, permit or encourage the denial to plaintiffs or any of them of their full and unrestricted right and privilege to use and enjoy their professional skills, and learning and that will further enjoin said defendants, agents, employees, servants or successors in office, to hold in status quo all actions at law, or in equity, civil or criminal, now pending in the Courts of the State of Louisiana and heretofore commenced by them under or pursuant to the terms and conditions of the Statute complained of in these proceedings or the rules and regulations and resolutions adopted pursuant thereto and that they shall take no further or other actions, civil or criminal, in any Court in pursuance of said Statute, rules, regulations, resolutions adopted pursuant thereto or in pursuance to any judgment, order or decree heretofore obtained or to be [fol. 21] hereafter obtained in purported reliance on the statute complained of or rules, regulations or resolutions adopted pursuant thereto, in any manner, way, shape or form, and that they shall cease and desist from discriminating in any way against petitioners herein solely because of their classification as chiropractors.

d. That this Honorable Court allow plaintiffs their costs incurred herein and grant such other and further relief as may appear fitting, proper and just in the premises.

By Counsel:

J. Minos Simon, 115 East Vermilion Street, Lafayette, Louisiana;

Floyd J. Reed, 919 Maison Blanche, New Orleans, Louisiana;

Jack L. Simms, Merchants and Farmers Bank Bldg., Leesville, Louisiana, By J. Minos Simon.

Duly sworn to by J. Minos Simon, jurat omitted in printing.

[fol. 22] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

[Title omitted]

MOTION PRESENTING DEFENSES UNDER RULE 12(b)—
Filed May 27, 1957

To the Honorable, The United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

First Defense

The Complaint fails to state a claim against your defendants upon which relief can be granted.

Second Defense

The Court is without jurisdiction over the subject matter of this action.

Third Defense

The Court is without jurisdiction over the persons made defendants.

Wherefore, your Movers pray that the foregoing Defenses be sustained and plaintiffs' suit hence dismissed at their cost.

And for all general and equitable relief.

Adams and Reese, By St. Clair Adams, Jr., 1808 National Bank of Commerce Bldg., New Orleans 12, Louisiana, Attorneys for Movers.

New Orleans, Louisiana, May 27, 1957

[fol. 23]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

[Title omitted]

MINUTE ENTRY GRANTING MOTION TO DISMISS, TREATED AS MOTION FOR SUMMARY JUDGMENT—June 14, 1957

This cause came on to be heard on motion of defendants to dismiss and after hearing argument, studying the briefs and considering the issues involved, the Court is now ready to rule.

It Is Ordered that defendants' motion to dismiss, treated as a motion for summary judgment, be and the same is hereby granted.

Reasons

Since no serious federal question, not heretofore decided by the Supreme Court of the United States, is presented, in the absence of diversity of citizenship, this court is without jurisdiction. *Ex Parte Poresky*, 290 U.S. 30; *Louisiana State Board of Medical Examiners* v. *Fife*, 162 La. 681, 111 So. 58, 274 U.S. 720; *Graves* v. *Minnesota*, 272 U.S. 425; *Douglas* v. *Noble*, 261 U.S. 165; *Dent* v. *West Virginia*, 129 U.S. 114; *Bush* v. *Orleans Parish School Board*, 138 F.Supp. 336, aff'd 5 Cir., 242 F.2d 156; *Polhemus* v. *American Medi-*

cal Association, et al., 10 Cir., 145 F.2d 357; *Hitchcock* v. *Collenberg, et al.*, 140 F.Supp. 894; *New Jersey Chiropractic Association* v. *State Board of Medical Examiners*, 79 F.Supp. 327.

[fol. 24]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action

JERRY R. ENGLAND, D.C., et al.

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS and RHETT McMAHON, President, Louisiana State Board of Medical Examiners, and EDWIN LAWSON, Secretary, Louisiana State Board of Medical Examiners

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Judgment—June 20, 1957

This cause having been heard at a former day, on the motion of defendants to dismiss, and the Court having granted the said motion to dismiss and having filed its written reasons in support of said ruling:

It Is Ordered, Adjudged and Decreed by the Court that judgment be, and is hereby entered, in favor of the defendants and against the plaintiffs, dismissing plaintiffs' suit, with costs.

[fol. 25] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

[Title omitted]

NOTICE OF APPEAL—Filed July 15, 1957

Notice is hereby given that Jerry R. England, Thomas W. Miller, William S. Boyd, Melvin D. Eastman, Robert Henry Wilkinson, Paul Shurtleff, James E. Collins, Erwin Jerome Dixeman, Paul J. Adams, George Dando, M. R. Metzel, Daniel J. Arton, Floyd Wesley Safford, Willie Sacks, Stanford G. Beatty, Stanford G. Beatty, Jr., Donald E. Ringquist, Jubert G. Arnold, Archie V. Browning, Jr., John W. Booth, O. S. Holliday, James C. Stephenson, John E. Flynn, R. F. Weller, R. L. Byron, Corwin Henneman, Gerry E. Hinton, B. D. Mooring, Jr., Glen Gilchrist, Keith E. Shaw, E. J. Nosser, Julian Edward Banker, A. P. Sipes, Harold B. Karas, H. C. Sloat, Roger C. Farmer, D. N. Gunn, Eric L. Lensgraf, Daniel L. Bryant, plaintiffs in the above numbered and entitled cause, hereby appeal to the United States Court of Appeals for the Fifth Circuit, from the final judgment in favor of Louisiana State Board of Medical Examiners, Rhett McMahon, President of the Louisiana State Board of Medical Examiners, and Edwin Lawson, Secretary, Louisiana State Board of Medical Examiners, defendants, and against above named plaintiffs dismissing plaintiffs' suit, with costs, entered in this action on June 21, 1957.

J. Minos Simon, Attorney for Plaintiffs, 115 E. Vermilion St., Lafayette, Louisiana;

Floyd J. Reed, Attorney for Plaintiffs, 919 Maison Blanche Bldg., New Orleans, Louisiana;

Jack L. Simms, Attorney for Plaintiffs, Merchants' & Farmers' Bank Bldg., Leesville, Louisiana.

Certificate of Service (omitted in printing).

[fol. 26]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16920

JERRY R. ENGLAND, et al., Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

OPINION—September 9, 1958

Before: RIVES, BROWN, and WISDOM, Circuit Judges.

PER CURIAM: This case was originally assigned to Judge Wisdom, who has written an opinion, which has been changed to appear as the dissenting opinion, fully and fairly developing the issues and concluding in affirmance of the district court's judgment in accordance with the tentative vote of all three judges in conference. Upon further study and deliberation, however, Judges Rives and [fol. 27] Brown now believe that the district court erred in dismissing the complaint for lack of a substantial federal question warranting exercise of jurisdiction. Ex parte Poresky, 290 U.S. 30.

We are not called on at this time to say whether chiropractors should be admitted to practice in Louisiana, but the question is whether they are entitled to an opportunity to prove that the State's denial of their claimed right to practice an allegedly useful profession is so arbitrary and unreasonable as to amount to a denial of due process or of the equal protection of the laws under the Fourteenth Amendment. It is certainly true that the State is not

bound to recognize every peculiar theory or school of medicine. Without doubt it is reasonable for the state to outlaw witch doctors, voodoo queens, bee stingers, and various other cults which no reasonably intelligent man would choose for the treatment of his ills, but it would certainly be arbitrary to exclude some, if not all, of the following classes which Louisiana does admit to practice: dentists, osteopaths, nurses, chiropodists, optometrists, pharmacists, and mid-wives. Just where is the dividing line? Under all of the cases, we think it is that the State cannot deny to any individual the right to exercise a *reasonable* choice in the method of treatment of his ills, nor the correlative right of practitioners to engage in the practice of a useful profession.

The case closest in point to that now presented is *Louisiana State Board of Medical Examiners* v. *Fife*, 1926, 162 La. 681, 111 So. 58, affirmed in a Per Curiam opinion on May 2, 1927, 274 U.S. 720. In the thirty odd years [fol. 28] since that decision was rendered, we judicially know that the healing art in general has made further enormous progress away from the ancient days when barbers did the blood letting. Can we say without hearing the evidence that chiropractic is no more entitled to recognition today than it was thirty odd years ago? It is claimed that the practice of chiropractic has now been legalized in forty-four of the States, in Hawaii, and in the District of Columbia, and that respectable colleges of chiropractic have been founded with courses comparable in length and claimed to be equal in quality to the medical colleges. It is not denied that the state may regulate, within reasonable bounds, the practice of chiropractic for the protection of the public health; but it is claimed that the requirements of a diploma from a college approved by the American Medical Association and a knowledge of surgery and materia medica bear no reasonable relation to the practice of chiropractic. Without hearing the evidence, we cannot say that those claims are untrue, or that a reasonable man might not intelligently choose a chiropractor for the treatment of some particular ailment. We hold simply that the plaintiffs are entitled to a day in court, to an opportunity to prove their case. The judgment is therefore

reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and Remanded.

[fol. 29] WISDOM, Circuit Judge, Dissenting:

This is an appeal from the United States District Court for the Eastern District of Louisiana. Appellants requested that a three-judge court be convened. The request was denied. After a hearing on appellee's motion to dismiss, treated as a motion for summary judgment, the district court dismissed the complaint.

With all due deference to my learned brothers on the Court, respectfully I dissent. It seems to me that there is no dispute as to any material factual issue. The critical issues of law appear on the face of the pleadings. We should decide them now.

Chiropractors are entitled to their day in court. They are not entitled to an extra day.

It is the business of the state to decide who shall practice medicine and under what circumstances a license may be issued. It is not our business—unless (1) the licensing statute is so unreasonable or (2) is administered so unreasonably as to amount to a denial of due process or of equal protection of the laws under the Fourteenth Amendment.

The statute is in the books for us to read. It has been interpreted by the Supreme Court of Louisiana. Similar statutes have been interpreted by the Supreme Court of United States. The overwhelming weight of the decisions is against the plaintiffs.

[fol. 30] Remand of this case produces a strange paradox. It allows a trial in order to show that chiropractic has advanced so far in the last thirty years that the Louisiana Medical Practice Act is unconstitutional—since it has no exception to permit *lower* standards to be applied to chiropractors than to any other applicants for a license to practice medicine. The effect of remanding is to allow the plaintiffs to introduce evidence that the Louisiana Board of Medical Examiners is acting unconstitutionally in that the Board does not disregard the statute by making a

special exception for chiropractors, since they cannot meet the standards everyone else must meet.

Evidence that materia medica and surgery bear no relation to chiropractic strikes me as immaterial. The standards established in the Louisiana Medical Practice Act do not purport to bear a relation to the practice of chiropractic. The object of the law is to license those persons holding themselves out as qualified medical doctors—qualified to practice surgery and medicine generally, not chiropractic.

It may be difficult in some cases for judges to avoid interstitial lawmaking. But not here. This is a clear case where it is for the legislature to take notice of the limitations in the medical training and the practice of chiropractic. It has done so in many similar cases: optometrists, mid-wives, pharmacists, osteopaths, nurses, and chiropodists. It is not for us to make a law for chiropractors or to say that the legislature enacted an unconstitutional law because it makes all applicants for a medical license toe the same mark. [fol. 31] Accepting the pleadings and exhibits as true, the plaintiffs failed to make a case. They failed to present a federal question not already decided against them by the United States Supreme Court. Since there is no diversity of citizenship, the district court properly held that it had no jurisdiction. *Hitchcock* v. *Collenberg,* 1956, D. Ct. Md., 140 F.Supp. 894, involving naturopathic practitioners, and citing leading Louisiana cases, is almost on all fours with the instant case. The United States Supreme Court affirmed *Hitchcock* v. *Collenberg* in a per curiam opinion in 1957, 353 U.S. 919, 77 S.Ct. 679, 1 L.Ed. 2d 718, citing *Dent* v. *West Virginia,* 1889, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623. *Cf.* the per curiam opinion affirming *Louisiana State Board of Medical Examiners* v. *Fife,* 1926, 162 La. 681, 111 So. 58; 1927, 274 U.S. 720, 47 S.Ct. 590, 71 L.Ed. 1324.

The continuity in this field of law is unbroken.

I.

Forty chiropractors filed suit. Each holds a diploma allegedly from "a school in good standing teaching the healing arts, to-wit: the Science of Chiropractic". They ask

for a declaratory judgment and for an injunction against the Louisiana State Board of Medical Examiners. (1) They attack the constitutionality of the Louisiana Medical Practice Act (La. R. S. 37:1261 et seq.) on the ground that on its face the statute is arbitrary, discriminatory, and couched in terms so as to deprive appellants of their civil rights, privileges, and immunities, and equal protection under the Constitution and laws of the United States. (2) They attack the Louisiana State Board of Medical Ex- [fol. 32] aminers as acting unconstitutionally in discriminating wilfully and maliciously against chiropractors, in violation of the plaintiffs' constitutional rights under the Fourteenth Amendment.

The Louisiana Medical Practice Act creates the Louisiana State Board of Medical Examiners "to examine all applicants for the practice of medicine": Section 1271 is the center of the chiropractors' target. This reads:

"Any person who wishes to practice medicine shall:

(1) Be twenty-one years of age;

(2) Be a citizen of the United States;

(3) Be of good moral character;

(4) Present to the board a diploma from a college in good standing of any sect teaching medicine or the healing art; and

(5) Pass an examination before the Board upon the following: Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology, and Bacteriology, Hygiene, Surgery, Theory and Practice of Medicine, Materia Medica, Obstetrics, and Gynecology."

In Section 1275 the legislature allows the Board to waive examinations in favor of an applicant from another state who presents a certificate of examination from a board of medical examiners "received on the equivalent of a Class A college standard American Medical Association".
[fol. 33] In line with Section 1275, the Board has consistently construed "a college in good standing" to mean a medical school approved by the Association of American

Medical Colleges or the Council on Medical Education and Hospitals of the American Medical Association. Schools of chiropractic are not accredited by the American Medical Association. Over the years, while the Board has so construed the law, the act has been amended and reenacted on a number of occasions, and in 1950 was reenacted as part of the Louisiana Revised Statutes.

The chiropractors contend, first, that the Act delegates arbitrary authority to the Board, with no standards to guide the Board in determining what is a "college in good standing". The chiropractors insist, secondly, that they are as qualified as anyone else under the terms of the statute to take the examination. The Board's construction of the statute has the effect of prohibiting the practice of chiropractic in Louisiana and is therefore discriminatory. In any event, they argue that chiropractors should enjoy the exemption given dentists, osteopaths, and pharmacists.

II.

The Louisiana Medical Practice Act is substantially similar to medical practice statutes of other states. These statutes have been attacked frequently on constitutional grounds similar to those the chiropractors urge on this appeal. Three decisions of the United States Supreme Court are the leading cases on the subject: *Dent* v. *West Virginia*, 1889, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623; *Douglas* v. *Noble*, 1923, 261 U.S. 165, 43 S.Ct. 303, 67 [fol. 34] L.Ed. 590; *Graves* v. *Minnesota*, 1926, 272 U.S. 425, 47 S.Ct. 122, 71 L.Ed. 331. See also *Hitchcock* v. *Collenberg*, 1956, D.Ct. Md., 140 F.Supp. 894, aff'd per curiam, 1957, 352 U.S. 919, 77 S.Ct. 679, 1 L.Ed. 2d 718, citing *Dent* v. *West Virginia*.

No one of course has an absolute right to practice medicine. This right is conditioned upon one's complying with reasonable regulations imposed by the State to protect the public health and welfare. Courts at every level in the judicial hierarchy emphasize that no profession is more open to eligibility regulations than the practice of medicine. " . . . Dealing, as its followers do, with the lives and health of the people, and requiring for its suc-

cessful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the state may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties." *Watson* v. *State of Maryland*, 1910, 218 U.S. 173, 176, 30 S.Ct. 644, 54 L.Ed. 987.

In *Dent* v. *West Virginia* the Court passed upon the validity of a state statute requiring every practitioner of medicine to obtain from the State Board of Health a certificate showing that he was a graduate of "a reputable medical college" or had practiced medicine ten years or had been examined by the Board and found qualified to practice medicine. The claim was made that the statute was unconstitutional because it vested in the Board arbitrary power to decide what was a reputable medical college, and thereby deprived defendant of due process. [fol. 35] The Court sets forth basic considerations governing the power of a state to issue a license.[1] The Court held

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[1] "It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions * * * The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity, as well as of deception and fraud. As one means to this end and it has been the practice of different states, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely; their possessions being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation."

that the statute did not violate due process, and also intimated that the equal protection clause could not be used to strike down the statute either. Mr. Justice Field, for the Court, said: "Few professions require more careful preparation by one who seeks to enter it than that of medicine. . . . Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. . . . No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his [fol. 36] services as a physician, that he possess such learning and skill, shall present evidence of it by a certificate or license from a body designated by the State as competent to judge of his qualifications." The Court pointed out that: "There is nothing of an arbitrary character in the provisions of the statute in question; *it applies to all physicians* . . . it imposes no conditions which cannot be readily met; . . . "

The question of inadequate standards was not raised in the Dent case. It was in *Douglas* v. *Noble,* involving a Washington statute providing that only licensed persons might practice dentistry. All applicants were required to undergo an examination by a board of examiners. To be eligible, the applicant had to be of good moral character and present a diploma from "a reputable dental college". The contention was, that since the statute did not state in terms what the scope and character of the examination should be, arbitrary power was conferred upon the board in violation of due process. Mr. Justice Brandeis, for the Court, pointed out that the authority the statute confers is a matter of construction and "its construction is a question of state law". Washington courts had construed the statute as not conferring arbitrary power upon the Board. The Supreme Court agreed that the statute indicated a general standard of fitness and the character and scope of the examination; subsidiary matters were appropriately committed to an administrative board; "the discretion here granted the examining board was well within the limits allowed by the Federal Constitu-

ion". The principles expressed in *Douglas* v. *Noble* are alive and pertinent.

[fol. 37] *Graves* v. *Minnesota* passes directly on the question whether a state could require a dentist to attend a school "in good standing" to be eligible for an examination before a Board of Dentists. The Court sustained the conviction of a dentist for practice of dentistry without a license even though he was a graduate dentist, because he was not graduated from an accredited school. The statute required a diploma from a "dental college of good standing". "By enacting the present statute the State has determined, through its legislative body, that to safeguard properly the public health it is necessary that no one be licensed to practice dentistry who does not hold a diploma from a dental college of good standing. That determination must be given great weight. . . . Clearly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry. We cannot say that the State is acting arbitrarily or unreasonably when, in the exercise of its judgment, it determines that the holding of such a diploma is a necessary qualification for the practice of dentistry; or that the distinction made in the granting of licenses between applicants who hold such diplomas and those who do not, is a classification which has no real or substantial basis . . . "

These cases hold that a state is not acting arbitrarily, in the regulation of the practice of medicine, in requiring that applicants for a license shall attend "a college of good standing" in order to be eligible for an examination leading to a license to practice. This requirement is not a grant of unlimited discretion to a board of examiners. In [fol. 38] effect it is a legislative standard to guide the board charged with administering the act. Further, a board of examiners does not act arbitrarily if it construes "college of good standing" as limited to certain approved or accredited schools.

Under *Douglas* v. *Noble* and *Graves* v. *Minnesota* federal courts are admonished to turn to state decisions on these questions and to give great weight to them.

III.

Allopathic State Board of Medical Examiners v. *Fowler*, 1898, 50 La. Ann. 1358, 24 So. 809 dealt with a statute creating a board of medical examiners composed of physicians recommended for appointment from lists furnished by the Louisiana Medical Society and the Hanneman [sic] State Medical Society. These organizations represented what were then the two recognized schools of medical science: the allopathic and the homeopathic[2] schools. The statute required an applicant for a license to present to the board a diploma from a medical college in good standing. The defendant had practiced medicine for several years. He had a diploma. But his diploma was from a "reputable institution of the eclectic school of medicine". He claimed that the statute discriminated against practitioners of the eclectic school. The court upheld his con- [fol. 39] viction on the narrow ground that he had practiced medicine without a license, but the Court upheld the constitutionality in broad terms. The reference to discrimination against the eclectic school is particularly relevant to this case:

> " . . . The legislature has not dealt with the eclectic school of medicine, and discriminated against it; it has simply selected as examiners, as it had the constitutional right to do, boards of examiners composed of physicians recommended for appointment by two certain named medical societies, and appointed by the governor on such recommendation. It has required that a person, before practicing medicine in the state, should present to the boards mentioned a diploma from a medical college in good standing, but it has not

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[2] Webster's New International Dictionary, Second Edition, (1958) defines "homeopathy" as follows: "The art of curing, founded on resemblances; the theory and its practice that disease is cured by remedies which produce on a healthy person effects similar to the symptoms of the complaint of the patient, the remedies being usually administered in minute doses. This system was founded by Dr. Samuel Hahnemann and is opposed to *allopathy*, or *heteropathy*".

attempted to declare and fix what constituted a medical college, nor what particular colleges nor classes of colleges were to be considered as 'medical colleges in good standing' . . . We know of no constitutional right given to particular persons, who, entertaining peculiar theories of medicine, group themselves together, and call themselves a special school of medicine under a selected name, to be recognized as and dealt with as such. An indefinite number of schools of medicine might claim recognition, with no fixed ascertained standard to pass upon their pretensions. . . . "

In *Louisiana State Board of Medical Examiners* v. *Cronk*, 1924, 157 La. 321, 102 So. 415, the court held that a chiropractor who had treated persons for liver, kidney, stomach complaints and other body ailments was practicing [fol. 40] medicine. The court defined "chiropractic" as stated in the margin of this opinion.[3]

The leading case in Louisiana is *Louisiana State Board of Medical Examiners* v. *Fife*, 1926, 162 La. 681, 111 So.

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[3] " 'Chiropractic' is defined in the catalogue of the Palmer School of Chiropractic as 'the philosophy, science, and art of things natural, and a system of adjusting the subluxated vertebrae of the spinal column, by hand, for the restoration of health.' The dean of the faculty of the Palmer School of Chiropractic testified on the trial of this case as follows:

"'The theory of chiropractic is that the subluxation produces pressure upon nerves which produce abnormal conditions on the tissues of the body; and by the adjustment of this subluxation the pressure is relieved, normal impulses are allowed to flow through these nerves, and the natural forces of the body do the rest.'

'A subluxation,' as defined by the defendant in his testimony, is 'a slight displacement of a vertebra.' Defendant also testifies that he uses no drugs in his practice, which consists solely in adjusting the subluxated vertebrae of the spine with both hands, and that the application of the hands is not in the nature of either rubbing or pressing, but is a thrusting movement. . . . " Louisiana State Board of Medical Examiners v. Cronk, 1924, 157 La. 321, 102 So. 415, 416. Appellants quote this definition in their complaint.

58;[4] 1927, 274 U.S. 720, 47 S.Ct. 590, 71 L.Ed. 1324. In the Fife case the Board sued to enjoin certain chiropractors from practicing medicine without a license. The defendants contended that the Medical Practice Act was unconstitutional because: (1) chiropractors were required to take materia medica and surgery, and since these subjects had no relation to chiropractic the Act suppresses chiropractors and violates due process; (2) chiropractors [fol. 41] are not exempt from the Act as are dentists, osteopaths, and pharmacists, and this denied chiropractors the equal protection of laws guaranteed by the 14th amendment. The Supreme Court of Louisiana held the Medical Practice Act constitutional. In construing the statute the Louisiana Court makes the important point: ". . . . While materia medica and surgery are not used in the chiropractic system, still they, as well as the other subjects required by the act, as amended, bear a relation to the practice of medicine as a general science and that, in view of the fact that the Legislature is not bound to recognize every school of medicine, and deal with it as such, is sufficient to prevent the act from being unconstitutional.". The Fife case held that the Legislature could, in its discretion, exempt certain groups and provide for them under separate statutes, and that those whom the Legislature did not choose to exempt had to comply with the provisions of the Act if they were practicing medicine. " . . . . defendants cannot complain, on the ground of being unjustly discriminated against, because the Legislature has not deemed proper to recognize their school of medicine, and make special provision for those desiring to practice that system, by prescribing a course of study in accord with the theories which it holds for restoring health. . . . If defendants wish to treat the sick in accordance with the theories held by

[4] A Writ of Error was taken in the Fife case to the United States Supreme Court. The Court affirmed the decision of the Supreme Court of Louisiana in a Per Curiam decision as follows: "May 2, 1927. Per Curiam: Affirmed on the authority of Dent v. West Virginia, 129 U. S. 114, 32 L.Ed. 623, 9 Sup. Ct. Rep. 231; Douglas v. Noble, 261 U.S. 165, 67 L.Ed. 590, 43 Sup. Ct. Rep. 303; and Graves v. Minnesota, 272 U.S. 425, ante, 331, 47 Sup. Ct. Rep. 122."

them, they must comply first with the Act of 1914, as amended. . . . "

In *Louisiana State Board of Medical Examiners* v. *Beatty*, 1951, 220 La. 1, 55 So. 2d 761, a direct attack was made on the "school in good standing" requirement. In that case, chiropractors claimed that the Act was unconstitutional [fol. 42] because it vested arbitrary power in the Board in determining what is a "school in good standing", and thereby denied chiropractors of equal protection of law. On the basis of the Graves case, the Supreme Court of Louisiana rejected this argument and held:

> "The provision that the applicant present a diploma from a college in good standing does not clothe the Board with an arbitrary power but only with the right to exercise discretion."

As to the objection that the Board consistently recognized only schools accepted by the American Medical Association, the court said:

> " . . . it would make no difference insofar as the constitutionality of the Act is concerned, whether the Board has taken such a stand or not. If the Board has made an arbitrary ruling as to the colleges which it recognizes as being in good standing, the remedy of the injured party is to apply for a mandamus."

IV.

We take up now the language of the Louisiana statute. Appellants assert that their "chief" complaint is that the statutes discriminates against them, "although there exists no distinction, bearing reasonable relation to the object of the statute, between plaintiffs and others, so as to justify the discrimination". They assert also that "the basic issue" is that the Board discriminates against them. There is very little difference between the legal positions of Dr. Fowler, of the eclectic school, and Dr. England, of the chiropractic school.

[fol. 43] The Louisiana statute may creak a little with age. But it has managed to work. And it has worked in sub-

stantially the same form for more than forty years. The "practice of medicine" is defined broadly enough to apply to witch doctors, voodoo queens, or the pharmacist who suggests aspirin for a headache.[5] So it should be, in the interest of protecting the public health.

There is no discrimination against chiropractors as such. The Act does not prohibit the practice of chiropractic or of any other system. The statute simply prohibits the practice of medicine without a license. It applies to all. Anyone who can meet the qualifications may take an examination, and upon passing, will be issued a license. Thereafter, if he chooses, he may specialize in the "science of chiropractic". In at least one instance (according to the exhibits) a license was issued to a practicing chiropractor who met the requirements of the Act.

[fol. 44] The statute establishes standards. They seem reasonable to me. Section 1271(4) requires an applicant to furnish a diploma from a "college in good standing". Section 1271(5) lists the subjects on which the applicant must be examined: "Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene, Surgery, Theory, and Practice of Medicine, Materia Medica, Obstetrics, and Gynecology." This list is surely descriptive of the subjects that the legislature regarded as the minimum

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[5] The present Medical Practice Act of Louisiana was originally Act 13 of 1914. Section 9 of Act 54 of 1918 amended re-enacted Section 13 of the Act of 1914. That section, now La. R.S. 37:1261, reads: "As used in this part 'The Practice of Medicine, Surgery or Midwifery' makes the holding out of one's self to the public as being engaged in the business of diagnosing, treating, curing or relieving any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being other than himself whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force or other agency or means is applied or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician, surgeon or midwife; or the using of any other title other than optician, to indicate that he is engaged in the business of refracting or fitting glasses to the human eye."

requirements for the curriculum of a medical school, if the school is to meet the legislative standard of "a college in good standing". Section 1275 shows that legislature equated "a college in good standing" with one approved by the American Medical Association. Section 1275 provides: "The board may waive examinations in favor of any applicant who presents to the Board a satisfactory certificate of examination from a board of medical examiners of another state if the board finds that the certificate of examination from the board of medical examiners of another state was received on the equivalent of *'Class A college standard American Medical Association'.*" This amounts to the legislature defining a college in good standing as a "Class A college standard American Medical Association". If the legislature allows the Board to waive examinations in favor of an applicant who presents a certificate from a Board of Examiners from another state only if he presents a certificate received on the equivalent of "Class A college standard American Medical Association", it is not unreasonable or arbitrary for the Board to apply the same minimum standard to Louisiana applicants.

[fol. 45] The chiropractors argue that their diplomas are from colleges of good standing and should carry as much weight as a diploma from Johns Hopkins; for example, they say, that the Palmer School of Chiropractic requires a total of 4,485 class hours against 3,397 class hours at Johns Hopkins Medical School. A detailed comparison throws a good deal of light on the reasonableness of the Board's actions measured against the standards considered proper by the legislature. 1,723 hours of subjects not taught at Johns Hopkins are taught at Palmer School. These include 195 hours of "Chiropractic Philosophy", 65 hours of Public Speaking, 65 hours of "Neurocolometer and Neurocolograph", 65 hours of "Ethics and Jurisprudence", 130 hours of "Principles and Practice, Chiropractic", 1,193 hours of Chiropractic Technic, Practice, and Hygiene. 1,192 hours of subjects not taught at Palmer School are taught at Johns Hopkins: 656 hours of medicine, 352 hours of surgery, 72 hours of pediatrics, 80 hours of pharmacology, 16 hours of psychology, and 16 hours of therapeutics.

This breakdown comes from an exhibit filed by the chiropractors. It seems to me that it demonstrates conclusively the reasonableness of the Board's interpretation of its duty under the Louisiana statute. The Louisiana legislature has said that a license to practice medicine in the state means that the licensee has sufficient knowledge of the subjects listed in Section 1271(5) to pass an examination on these subjects. It is implicit in the act that the licensee studied these subjects in a college of good standing. The exhibits prove that chiropractors have not the training for surgery [fol. 46] and general medical knowledge for which a doctor's license is the accepted symbol to the public. On the plaintiffs' showing in this case, the Board would have been derelict in its statutory duty if it had permitted them to take an examination leading to a license.

Finally, the chiropractors complain that the Board arbitrarily and through pure whim discriminates against them in not requiring dentists, osteopaths, nurses, chiropodists, optometrists, pharmacists, and mid-wives to comply with the Medical Practice Act. These occupations or professions are the subject of special legislative acts. As said in the Fife case, in answer to the same argument: the requirements for admission of osteopaths, midwives, chiropodists, trained nurses and others are different; they do not need materia or surgery. The legislature has taken notice of the limited training of a chiropodist or a midwife and has authorized issuance of a restricted license to practice a specialty. But, as in Fife, the legislature is not "called upon to recognize every school of medicine . . . [It] has a reasonable discretion as to whether a particular school should be recognized and special provisions made for it".

Appellants contend that they do not need materia medica or surgery in the practice of chiropractic. No doubt. But "Dr." carries no descriptive tag. As long as a license to practice medicine implies a knowledge of materia medica and surgery, the Board of Examiners cannot be considered arbitrary or unreasonable in not accepting a diploma from the Palmer School of Chiropractic on the same basis as a diploma from Johns Hopkins Medical School.

[fol. 47] Let us suppose that a number of well trained psychology majors, after attending Duke University, organize a graduate school of medicine in ESP, using extrasensory perception exclusively for diagnosis and hypnotism exclusively for treatment. Materia medica and surgery have no bearing on the practice of ESP. Their school has 2,000 hours in subjects not taught at Johns Hopkins; Hopkins has no special courses on ESP. It is clear that under the Louisiana law, they practice medicine. Some of the ESP practitioners have had uncanny success in certain cases, especially in the psychiatric field. In thirty years ESP has advanced a long way from the ouija board. It is argued that the public should have the constitutional right to go to a doctor of their choice for medical treatment. I have no doubt that Louisiana could enact a law licensing ESP practitioners to practice their specialty. But the state is under no constitutional obligation to license every organized group giving treatments for health. I cannot imagine this Court or any other court telling the state of Louisiana that its general medical practice act is unconstitutional, because ESP practitioners are not eligible to be licensed. I cannot imagine this Court or any other court remanding a case to allow an ESP practitioner to show that the Board of Medical Examiners was arbitrary in declaring him ineligible for a license that would allow him to ignore Dr. Rhine's lectures and instead cut open a man's brain.

I say nothing against chiropractors. The American Medical Association may some day go the way of the Hahnemann Medical Society. For all we know, the Louisiana legislature may some day substitute "Chiropractic Philosophy" [fol. 48] and "Neurocolometer and Neurocolograph" for material medica and surgery in Section 1271. I say only that the Medical Practice Act is not arbitrary and unreasonable on its face and accepting the allegations of the complaint as true, the Board of Medical Examiners has not acted arbitrarily or unreasonably, even though the statute, as administered by the Board, has the effect of barring from state medical examinations applicants with diplomas from schools of chiropractic.

The act set up reasonable standards. And everyone toes the same mark.

V.

The district court properly dismissed the complaint for lack of a substantial federal question warranting exercise of jurisdiction. Ex Parte Poresky, 290 U.S. 30, 54 S.Ct. 3, 78 L.Ed. 152. I would affirm.

[fol. 49]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16920

JERRY R. ENGLAND, et al., Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

OPINION ON PETITION FOR REHEARING—January 23, 1959

Before: RIVES, BROWN and WISDOM, Circuit Judges.

PER CURIAM: Appellees' petition for rehearing evidences such complete misunderstanding of the scope and effect of this Court's opinion and decision, that some further [fol. 50] elucidation is indicated, particularly in view of the public importance of this litigation. That can best be done in our opinion, by briefly answering the first four grounds of the petition for rehearing.

"1. *The Court, in its opinion of reversal remanding this case for trial, has failed to take into consideration the fact that neither a State nor a Federal Court can supersede the authority of the State Legislature, particularly where the health and welfare of the people of the State are at issue.*"

It is as elementary as it is fundamental that no court can supersede the authority of the state legislature. Certainly, this Court did not and would not attempt to do so. Our opinion clearly stated that: ". . . the question is whether they (chiropractors) are entitled to an opportunity to prove that the State's denial of their claimed right to practice an allegedly useful profession is so arbitrary and unreasonable as to amount to a denial of due process or of the equal protection of the laws under the Fourteenth Amendment." The extent of our holding was thus expressed: "We hold simply that the plaintiffs are entitled to a day in court, to an opportunity to prove their case."

No court, state or federal, has held that a state legislature has *unlimited* power or authority even with respect to such subjects as the health and welfare of the people of the state. The primary responsibility rests with the state legislature, but the courts have a solemn and inescapable duty, in an appropriate case, of deciding whether [fol. 51] state action is so arbitrary and unreasonable as to be unconstitutional. That salutary check on the power and authority of a state legislature is recognized in every one of the cases relied on by the petitioners, as will appear from brief quotations in the margin.[1]

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[1] "It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them, that is, the right to continue their prosecution, is often of great value to the possessors, and cannot be arbitrarily taken from

[fol. 52] "2. *The majority opinion of the Court in its Per Curiam decision does not consider or give effect to prior decisions of the Supreme Court of the United States. In particular, we refer to the following decisions:*

Louisiana State Board of Medical Examiners vs. *Fife*, 162 La. 681, 111 So. 58, 274 U.S. 720;
Graves vs. *Minnesota*, 272 U.S. 425;
Douglas vs. *Noble*, 261 U.S. 165;
Dent vs. *West Virginia*, 129 U.S. 114."

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them, any more than their real or personal property can be thus taken. But there is no arbitrary deprivation of such right where its exercise is not permitted because of a failure to comply with conditions imposed by the State for the protection of society. The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are attainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation." Dent v. West Virginia, 1889, 129 U.S. 114, 121, 122.

"What authority the statute purports to confer upon the board is a question of construction. If it purported to confer arbitrary discretion to withhold a license, or to impose conditions which have no relation to the applicant's qualifications to practice dentistry, the statute would, of course, violate the due process clause of the Fourteenth Amendment." Douglas v. Noble, 1923, 261 U.S. 165, 168.

". . . And the case is to be considered in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or un-

[fol. 53] The last three cases are those cited by the Supreme Court of the United States as authority for its per curiam affirmance in the first case. In footnote 1, *supra*, we have quoted from each of the cases, and each, of course, had our careful consideration. It is important to note that every one of those cases was decided upon the *evidence* and not merely upon the *pleadings* as was this case. Further, it is not clear that in the case closest in point, *Louisiana State Board of Medical Examiners* v. *Fife*, *supra*, there was actually and fully litigated and tried the issue of whether practitioners of chiropractic were engaged in the practice of a useful profession or calling which they had a lawful right to pursue unimpeded by requirements having *no* relation to such calling or profession. The decision in that case operates as res judicata only as to those who were parties, and does not deprive the present appellants of their day in court.

"3. *The Court recognized that the State has the right to regulate the practice of medicine, and can bar such cults as witch doctors, voodoo queens, bee-stingers, and*

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reasonable attempts to exercise the authority vested in it in the public interest." Graves v. Minnesota, 1926, 272 U.S. 425, 428.

". . . And, although a state cannot prohibit the practice of medicine and surgery, and would hardly undertake to do such a thing, still it is well established that, under its police power, it may regulate, within reasonable bounds, for the protection of the public health, the practice of either, by defining the qualifications which one must possess before being admitted to practice the same, and, to make these regulations effective, to require the one intending to engage in the practice, to possess, before engaging therein, a certificate from the proper authority showing that he possesses the required qualifications . . . The Legislature, however, in defining these requirements, cannot prescribe, as a condition to the right to practice, knowledge of a subject which bears no relation to the practice of medicine . . .

". . . If the Legislature were called upon to recognize every school of medicine, and to deal with it as such, requiring nothing but what the system practiced by each school demands, there might be some force to defendants' contention, but, as we have held, the Legislature is not called upon to do so, but has a reasonable discretion as to whether a particular school should be recognized and special provision made for it . . ." Louisiana State Board of Medical Examiners v. Fife, 1926, La., 111 So. 58, 60, 61.

others, but apparently did not realize that any order that might be issued by this or the District Court compelling the Louisiana State Board of Medical Examiners to issue a medical license to chiropractors would at the same time have the effect of permitting anybody to practice medicine. It may be facetious, but if such an order were ever issued, even the writer of this Petition would have the right to apply to the Louisiana State Board of Medical Examiners, and they would have to issue him a medical license."

[fol. 54] The Louisiana State Board of Medical Examiners certainly cannot be required to issue to a chiropractor a license to practice medicine unless he complies with all of the statutory prerequisites, including the passing of an examination before the Board upon the subjects of surgery and materia medica,[2] which the appellants claim bear no reasonable relation to the practice of chiropractic. That, however, is not the question at issue. The Louisiana State Board of Medical Examiners has more extensive powers than those of simply examining and licensing applicants for the practice of medicine. It has broad and preferential powers to conduct legal proceedings for the prevention of the unauthorized practice of medicine,[3] as that practice is broadly defined by the Louisiana Statute.[4] Those powers, the complaint alleges, are being used in such a manner as to deprive the plaintiffs of their claimed right to practice chiropractic in Louisiana.[5] As we understand, the plain-

[2] La. R.S. 37:1271 (5).

[3] La. R.S. 37:1286.

[4] La. R.S. 37:1261.

[5] "Plaintiffs aver that the Louisiana State Board of Medical Examiners has heretofore, does and threatens to continue to invoke the provisions of the Statute complained of herein as a means of enjoining plaintiffs from exercising their rights and privileges as citizens of the United States and for purposes of imposing fines and penalties on plaintiffs and all chiropractors in the State of Louisiana and by their efforts have caused to be established in the State of Louisiana by the Courts of Louisiana, a rule of law subjecting plaintiffs and all chiropractors to the provisions of the Statute

[fol. 55] tiffs can claim no right to practice medicine as that practice is engaged in by medical doctors and surgeons. The question is whether they can be constitutionally excluded from the practice of chiropractic in Louisiana.

"4. *The majority opinion of the Court has completely overlooked the fact that the Medical Practice Act of Louisiana does not prohibit the practice of chiropractic but merely defines what constitutes the practice of medicine and directs the State Board to issue licenses to practice medicine only to those qualified as defined in the Statute. If a man is qualified to and takes the required examination under the Medical Practice Act, he can practice chiropractic, or for that matter, any of the other cults that have developed on the fringe of true medicine.*"

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complained of herein; that the alleged basis used to obtain the injunctions and impose fines and forfeitures on your plaintiffs herein and all chiropractors, is that plaintiffs and all chiropractors in Louisiana do not possess a certificate from the Louisiana State Board of Medical Examiners . . ."

"Plaintiffs allege that the defendants, Rhett McMahon and Edwin H. Lawson, while acting in their respective official capacities as set forth more fully herein before, and the members of the defendant Board, and the agents, attorneys, employees and servants of said State Board have drafted resolutions authorizing the prosecution in the State Courts of Louisiana of some or all of the plaintiffs herein, have actually prosecuted in the State Courts of Louisiana some of plaintiffs herein, and have thereby sought to obtain and intend to obtain injunctions, fines and forfeitures against plaintiffs herein and thereby intend to prohibit under penalty of imprisonment the plaintiffs herein from practicing their professional skills, all in purported reliance on said Act complained of herein and only because plaintiffs are chiropractors; that plaintiffs are now and threaten to continue to be greatly harmed, damaged, imprisoned and injured by the illegal, wrongful, knowing and purposeful acts of the defendants, and each of them, and they have no plain, adequate or efficient remedy at law to redress the wrongful, knowing and purposeful acts of the defendants other than this action for Declaratory Judgment and Injunctive relief; that any other remedy to which they could be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause plaintiffs irreparable harm and injury and occasion undue hardship, vexation and delay."

The answer is that the mere form of the statutes of a state cannot justify or excuse the deprivation of one's rights [fol. 56] under the Constitution of the United States. The "practice of medicine" is defined broadly enough[6] to apply to dentists, nurses, and pharmacists. Each of those three professions is protected by a special statute, but if it were not, would any one deny the jurisdiction of a federal district court to protect a dentist, a nurse, or a pharmacist in the practice of his or her useful profession or calling? We reiterate our holding that the plaintiffs are entitled to an opportunity to attempt to prove that chiropractic is such a useful profession or calling that they cannot be constitutionally excluded from its practice in Louisiana in the manner and form claimed to be attempted by the State Legislature and by the State Board of Medical Examiners. Nothing said in our original opinion should operate to limit the evidence to the period since the decision in *Louisiana State Board of Medical Examiners* v. *Fife, supra.*

The foregoing was all that we had originally written in denying the petition for rehearing. Our dissenting brother, whose opinion we value highly, remained unconvinced, and further expressed his views so cogently and vigorously that we have been led to make a careful re-examination of our own views. They remain the same, but, to make certain that we do not continue to be misunderstood, we shall attempt still further to elucidate those views at considerable length.

It was in 1888, before the Supreme Court had the opportunity to consider the full impact of the Fourteenth [fol. 57] Amendment upon the rights of the States (couched in terms, "Police Power") to regulate the practice of medicine and the related healing arts,[7] that the case of *Dent*

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[6] See Footnote 4, *supra.*

[7] Before 1888 the Supreme Court had interpreted the effect of the Fourteenth Amendment upon various state laws which regulated alleged property and liberty guarantees on the basis of public health and welfare. These cases developed the well-known early policy of judicial restraint in economic due process. *E.g.*, Munn v. Illinois, 1876, 94 S.Ct. 113; Barbier v. Connally, 1885, 113 U.S. 27; Yick Wo v. Hopkins, 1885, 118 U.S. 356; Mugler v. Kansas, 1887, 123 U.S. 623; Powell v. Pennsylvania, 1887, 127 U.S. 679.

v. *West Virginia*, 1888, 129 U.S. 114, was decided. The Court upheld a state regulation which made it mandatory for persons who practiced medicine, surgery, or obstetrics either to have graduated from a reputable medical college or to have practiced medicine for ten continuous years preceding the enactment. The Court stated that every citizen of the United States has a right to follow any lawful calling, business, or profession, "subject only to such restrictions as are imposed upon all persons of like age, sex, and condition . . . and [this right] cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken." (129 U.S. at pp. 121, 122.) On the other side of the balance, however, is the right of the state to regulate to protect the health and general welfare of its people. Concerning this police power, the Court stated the folfowing language which has served as the basis for practically every decision concerning state regulation over the medical field:

> ". . . But there is no arbitrary deprivation of such right where its exercise is not permitted because of a [fol. 58] failure to comply with conditions imposed by the State for the protection of society. The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity

can be raised because of their stringency or difficulty. *It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.*" (Emphasis supplied.) 129 U.S. at pp. 121, 122.

Therefore, the *Dent* case established that only when the regulations "have no relation to such calling or profession" will they be struck down as arbitrary or unreasonable or capricious.

[fol. 59] After the *Dent* case, several cases reiterated its holding that the courts would practice "judicial restraint" in reviewing the constitutionality of state laws concerning the regulation of public health and welfare.[5] With

[5] The Court upheld such various health and general welfare enactments as a statute expressly prohibiting barber shops to be considered a "work of necessity or charity" which would prevent them from doing business on Sunday (Petit v. Minnesota, 1899, 177 U.S. 164), a license tax of $100.00 for the sale of cigarettes (Gundling v. Chicago, 1900, 177 U.S. 183), and a statute preventing any felon from practicing medicine whether the conviction came before or after the enactment (Hawker v. New York, 1897, 170 U.S. 189). However, the Court did hold an act regulating the slaughtering of animals and the inspection of meats unconstitutional as a burden on interstate commerce (Minnesota v. Barber, 1889, 136 U.S. 313).

In 1905 in the case of Jacobson v. Massachusetts, 197 U.S. 11, Justice Harlan, speaking for the Court in upholding the constitutionality of a compulsory vaccination law against attacks by healthy individuals, stated:

"Although this Court has refrained from any attempt to define the limits of that power (police power), yet it has distinctly recognized the authority of a State to enact quarantine laws and 'health laws of every description'; indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other States. (197 U.S. at p. 25)

"...

"If there is any such power in the judiciary to review legislative action in respect to a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, *has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law,*

[fol. 60] the *Dent* case thus strengthened, the case of *Watson* v. *Maryland*, 1910, 218 U.S. 173, came before the Court. A *practicing physician* attempted unsuccessfully to have the Maryland Medical Practice Act declared unconstitutional as arbitrary and containing unreasonable classifications and requirements which were similar to the present Louisiana Act.[9] He was admonished with the following strong language from the Court:

> "It is too well settled to require discussion at this day that the police power of the States extends to the regulation of certain trades and callings, particularly those which closely concern the public health. There is perhaps no profession more properly open to such regulation than that which embraces the practitioners of medicine. Dealing, as its followers do, with the lives and health of the people, and requiring for its successful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the State may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties." (218 U.S. at p. 176.)[10]

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it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. Mugler v. Kansas, 123 U.S. 623, 661; Minnesota v. Barber, 136 U.S. 313, 320; Atkin v. Kansas, 191 U.S. 207, 223." (Emphasis supplied.) (197 U.S. at p. 31.)

However, Justice Harlan warned:

"..... —that the police power of a State, whether exercised by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested." (197 U.S. at p. 38.)

[9] In *Watson* v. *Maryland*, 1910, 218 U.S. 173, the Act required all physicians to stand an examination in various subjects unless they had been practicing for a required number of years or had treated so many people in the past year. The Act also provided for the requirements of good moral character and a diploma from certain medical colleges.

[10] However, the above quote was qualified with this language:

"It was therein held [Williams v. Arkansas, 217 U.S. 79] that regulations of a particular trade or business essential to the public

[fol. 61] Only two years later in *Collins* v. *Texas*, 1912, 223 U.S. 289, the Court, through Mr. Justice Holmes, strengthened the Court's laissez-faire attitude of lack of interference with a State's regulation over the field of medicine. Collins was an osteopath who professed "to help certain ailments by scientific manipulation affecting the nerve centres." After a two-year course of study, he held a diploma from the American School of Osteopathy, Kirksville, Missouri. The Texas Medical Practice Act was practically identical to the one in the present case. Its definition of "practicing medicine within the meaning of this Act" was all inclusive. After providing for obtaining verification licenses for all existing medical practitioners, it provided that all new applicants must be graduates of "bona fide reputable medical schools," reputability to be met when the school's "entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States . . . " The Act also required the applicant, after presenting such a diploma, to pass an examination on the subject of anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. The Act then specifically excluded from its operation dentists, nurses, masseurs, and surgeons of the Armed Forces.

[fol. 62] Observing that Collins had not presented his osteopathy diploma to the Board of Medical Examiners and had not attempted to obtain a verification license, the Court held that his proof failed to show that the statute inflicted any constitutional wrong, especially since there was no showing that the required examination covered

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health and safety are within the legislative capacity of the State in the exercise of its police power, and that unless such regulations are so *unreasonable and extravagant* as to interfere with property and personal rights of citizens, unnecessarily and arbitrarily, they are within the power of the State; and that the classification of the subjects of such legislation, so long as such classification has a *reasonable basis* and is not merely arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to the citizen the equal protection of the laws." (Emphasis supplied.) (218 U.S. at p. 178)

such subjects as therapeutics or materia medica which had no relation to osteopathy.

The Court further held that the plenary definition of practicing medicine in Section 13 of the Act was not arbitrary or irrational since its purpose was merely to define who should come within the terms of the Act, and "we should presume, until the Texas courts say otherwise, that the reference in §4 to the diploma of a reputable and legal college of medicine and the confining in §7 of examinations to graduates of reputable medical schools, use the words medicine and medical with the same broad sense as §13, and that the diploma of the plaintiff in error would not be rejected merely because it came from a school of osteopathy." 223 U.S. at p. 296. After thus presuming that graduates of reputable schools of osteopathy would be eligible to take the examinations in the named subjects, the Court concludes that these examinations were not unreasonable or capricious or unrelated requirements to the practice of osteopathy and that the expressed exclusion of nurses, masseurs or dentists was not discriminatory.[11]

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[11] "In short, the statute says that if you want to do what it calls practising medicine you must have gone to a reputable school in that kind of practice. Whatever may be the osteopathic dislike of medicines, neither the school nor the plaintiff in error suffers a constitutional wrong if his place of tuition is called a medical school by the act for the purpose of showing that it satisfies the statutory requirements. He cannot say that it would not have been regarded as doing so, because he has not tried. *Dent* v. *West Virginia*, 129 U.S. 114, 124.

"An osteopath professes, the plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centres. It is intelligible, therefore that the State should require of him a scientific training. *Dent* v. *West Virginia*, 129 U.S. 114; *Watson* v. *Maryland*, 218 U.S. 173. He like others must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy, that a man knows it when he has a cold or a toothache. For a general practice science is needed. An osteopath undertakes to be something more than a nurse or a masseur, and the difference rests precisely in a claim to greater science, which the State requires him to prove. The same considerations that justify including him justify excluding the lower grades from the law." Collins v. Texas, 1912, 223 U.S. 296, 297.

[fol. 63] Therefore, this case, by dictum, raises an analogous issue to one raised in the case at bar, where the chiropractors contend that the defendant Board, by limiting applicants to graduates of American Medical Association approved schools, has arbitrarily prevented chiropractors from becoming eligible to take the required examination. In other words, that the requirement of a "diploma from a college in good standing of *any sect* teaching medicine or the healing art" under Section 1271 must be construed (under a reasonable interpretation) in the "same broad sense" as Section 1261, "and that the diploma of the plaintiff in error would not be rejected merely because it came from a school of" chiropractic. Plaintiffs follow through by saying that the Palmer School of Chiropractic *is* a "college in good standing of *any sect* teaching medicine or the healing art."

In two cases heavily relied upon by the appellees, *Douglas* v. *Noble*, 1923, 261 U.S. 165, and *Graves* v. *Minnesota*, 1926, [fol. 64] 272 U.S. 425, the Court expressed in strong language that the state legislature may, within the limitations of reasonableness and non-arbitrariness, exercise its police statutes so as to prescribe regulations, requirements, and qualifications, for *dentists practicing dentistry* within the State.[12] However strongly the appellees rely upon these

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[12] In *Douglas* v. *Noble*, an act of the State of Washington which provided license requirements for dentists was under attack as being an arbitrary exercise of legislative power. After providing for good moral character and a diploma from a reputable dental college, the act allowed the dental board to determine what "knowledge and skill is necessary and whether the applicant possesses this" by an examination. The applicant met the first two requirements but flunked the dental board's examination. The Court summarily held that there was no arbitrary discretion to grant or withhold or revoke licenses.

In *Graves* v. *Minnesota*, the Minnesota Act required that every applicant for a dentist's license should produce before the Board of Dental Examiners "his diploma from some dental college of good standing" of which the Board shall be the judge. Dentist Graves did not have a diploma from such college, was refused a license, and was thus convicted under the Act. In holding that the diploma requirement from such college is not unreasonable, arbitrary, or discriminatory under the Fourteenth Amendment, the Court stated that "it is well settled that a state may, consistently

two cases, we cannot see how they can be anything but authority for the general proposition that such a case

> " . . . is to be considered in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are *arbitrary* or *unreasonable* attempts to exercise the authority vested in it in the public interest." (Italics supplied.) *Graves* v. *Minnesota*, 272 U.S. at p. 428.

[fol. 65] In line with *Douglas* v. *Noble* and *Graves* v. *Minnesota, supra*, the Court has held that a state, by insisting upon the personal obligations of the individual, may deny the right to practice dentistry to corporations, *Miller* v. *State Board of Dental Examiners*, 1932, 287 U.S. 563, may prohibit dentists from advertising or having any kind of publicity, *Semler* v. *Dental Examiners*, 1935, 294 U.S. 608, and may prohibit the selling of eyeglasses at any retail store without the personal attendance of a physician or optometrist, *Roschen* v. *Ward*, 1929, 279 U.S. 337.

The case which the appellee-Board says is dispositive of the case at bar is *Louisiana Board of Medical Examiners* v. *Fife*, 1927, 162 La. 681, 111 So. 58, aff'd per curiam on the authority of *Dent* v. *West Virginia, supra, Douglas* v. *Noble, supra*, and *Graves* v. *Minnesota, supra*. The *Fife* case was based in large part upon two earlier decisions of the Louisiana state courts, *Allopathic State Board of Medical Examiners* v. *Fowler*, 1898, 50 La. Ann. 1358, 24 So. 809, and *Louisiana State Board of Medical Examiners* v. *Cronk*, 1924, 157 La. 321, 102 So. 415, discussed in the margin.[13]

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with the Fourteenth Amendment, prescribe that only persons possessing the reasonable, necessary qualifications of learning and skill shall practice medicine or dentistry."

[13] In the *Fowler* case, the members of the board of medical examiners were either of the allopathic or the homeopathic schools of medical science. The defendant had a diploma from an eclectic school of medicine, and, upon conviction of practicing medicine without a license, he defended on the grounds that the statute

[fol. 66] The *Fife* case was an appeal from an enjoining of chiropractors from practicing medicine without a license. After reiterating that "practicing chiropractic" was under the definition of practicing medicine (as held in the *Cronk* case, *supra*), the Court answered the chiropractors' contentions that the requirements of the Act, having no reasonable relation to chiropractic, "virtually suppress" chiropractic in violation of constitutional rights[14] by stating, and we paraphrase from the opinion: Although a state cannot prohibit the practice of medicine, it may, under its police power, regulate it within reasonable bounds, by defining the qualifications necessary to admission to practice and requiring a certificate from a proper authority showing that one possesses the above qualifications. As to the examination in such courses as materia medica and surgery (alleged to be immaterial to chiropractic), the legislature cannot require knowledge of a subject which bears no relation to the practice of medicine. But this does not mean that the state must make requirements for each particular school of medicine or each theory of the healing arts (*Fowler* case, *supra*). Likewise, the exclusion of others (as dentists and osteopaths) from the Act does not unconstitutionally dis-

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discriminated against the eclectic school. The court held that a person's constitutional rights did not bind the state to recognize and deal with each "special school of medicine under a selected name."

In the *Cronk* case, the court upheld a conviction of practicing medicine without a license, deciding that practicing chiropractic was within the definition of "Practice of Medicine, Surgery or Mid-wifery."

[14] The court stated the issue:

". . . Their contention is that to require them to stand an examination in surgery and materia medica, and perhaps in other things, is to require them to be qualified in subjects for which they and those who practice chiropractic have no need, and which bear no relation to that system; and, since the effect of these requirements is to virtually suppress the practice of chiropractic in this state, they plead that the statute deprives them of liberty and property without due process of law, in violation of the constitutions of this state and of the United States."

Louisiana Board of Medical Examiners v. Fife, 1927, 162 La. 681, 111 So. 58, 60.

[fol. 67] criminate against chiropractors because there is no constitutional right given to a particular group of people which requires a state to recognize them as a special school of medicine (*Fowler* case, *supra*). Therefore,

> " . . . If the Legislature were called upon to recognize every school of medicine, and to deal with it as such, requiring nothing but what the system practiced by each school demands, there might be some force to defendants' contention, but, as we have held, the Legislature is not called upon to do so, *but has a reasonable discretion* as to whether a particular school should be recognized and special provision made for it." (Italics supplied.) (111 So. at p. 61.)

There have been three recent cases concerning state regulation in the field of the healing art which help fill the picture of the court's role as a reviewing authority in this area. These three cases are *Williamson* v. *Lee Optical Company*, 1955, 348 U.S. 483, reversing 120 F.Supp. 128; *Dantzler* v. *Callison*, S.Car. 1956, 94 S.E.2d 177, dismissed per curiam for want of a substantial federal question, 1956, 352 U.S. 939; and *Hitchcock* v. *Collenberg*, 1956, 140 F.Supp. 894, aff'd per curiam, 1957, 353 U.S. 919.

In *Williamson* v. *Lee Optical Company* the end result of an Oklahoma Act was to outlaw opticians. A three-judge district court held several features of the Act unconstitutional.[15] *After thoroughly examining the evidence*, [fol. 68] the Supreme Court, through Mr. Justice Douglas, reversed the district court on four particular facets, speculating on the evidence in the record that:

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[15] The district court held *inter alia* that the prevention of opticians from replacing old lenses was unconstitutional, because the regulation was not "reasonably and rationally related to the health and welfare of the people" in that it was purely mechanical and any expert optician could do it, and the regulation constituted an arbitrary interference with the optician's right to do business; that it was unconstitutional to subject opticians to the Act and to exempt makers of ready-to-wear glasses; and that the section which made it unlawful to solicit the sale of frames or other optical appliances and the section which prohibited the renting of space to people doing eye examinations were also unconstitutional, these having no reasonable relation to public health.

"... the legislature might have concluded ... (p. 487).
"... the legislature may think ... (p. 489).
"... the legislature might conclude ... (p. 490).
"... it may be deemed important ... (p. 491)."

Therefore, the method of review or test used by the Court was to determine *from the evidence* the legislative purpose or objective and then determine if the "regulation has no *rational relation* to that objective and therefore is beyond constitutional bounds." (Emphasis supplied.) (348 U.S. at p. 491.) This was evident early in its opinion where the court concluded:

> "... But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
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> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial [fol. 69] conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought. See *Nebbia* v. *New York*, 291 U.S. 502; *West Coast Hotel Co.* v. *Parish*, 300 U.S. 379; *Olsen* v. *Nebraska*, 313 U.S. 236; *Lincoln Union* v. *Northwestern Co.*, 335 U.S. 525; *Daniel* v. *Family Ins. Co.*, 336 U.S. 220; *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U.S. 421. We emphasize again what Chief Justice Waite said in *Munn* v. *Illinois*, 94 U.S. 113, 134, 'For protection against abuses by legislatures the people must resort to the polls, not to the courts.'" (348 U.S. at pp. 487-488.)

Dantzler v. *Callison* was an original action brought in the Supreme Court of South Carolina attacking a statute which expressly made it unlawful for anyone other than medical doctors to practice naturopathy. The plaintiffs, who had practiced naturopathy before the act, raised many of the same constitutional issues as were raised in the case at bar. Prefacing that naturopathy is a comparatively new profession and has been recognized "as accepted processes of pre-

ventive and curative medicine," the South Carolina court felt constrained to hold the act constitutional as a valid exercise of police power.[16]

[fol. 70] Related to *Dantzler* v. *Callison* is the case of *Hitchcock* v. *Collenberg* where naturopaths sought to have declared unconstitutional the Maryland Medical Practice Act. The *Hitchcock* case closely parallels the *Fife* case—the definition of practice of medicine included naturopathy by implication; the applicant was required to take an examination in non-naturopathic subjects; and the Act contained special provisions for the licensing of many other groups other than naturopaths. The district court's opinion followed the *Fife* case, stating: "This is good law and good sense in Maryland as well as Louisiana." (140 F.Supp. at p. 901.)

It must be noted that the three-judge court in the *Hitchcock* case granted the defendant's motion to dismiss the amended complaint and the Supreme Court affirmed this judgment per curiam, citing *Taylor* v. *Oklahoma*, 352 U.S. 805; *Dantzler* v. *Callison*, 352 U.S. 939; and *Dent* v. *West Virginia*, 129 U.S. 114. The case of *Taylor* v. *Oklahoma*, 291 P.2d 1133, appeal dismissed for want of a substantial federal question, 352 U.S. 805, raised substantially the same question as *Hitchcock* v. *Collenberg* and the Supreme Court of California said that the state's practice

[16] The court concluded that the state had properly set as standards for naturopaths the qualifications for medical doctors since naturopaths were known to practice "the use and practice of physiotherapy, minor surgery, obstetrics, gynecology, autotherapy and biologicals" and to specialize in "purifying, cleansing and normalizing human tissues for preservation or restoration of health, according to the fundamental principles of anatomy and physiology." The court restated the familiar principles that it is up to the legislature to set standards for the practice, since the right to practice medicine, surgery, or naturopathy, is a right granted upon condition; that while a state may not prohibit the practice of medicine or surgery, it may, under its police power, regulate within reasonable bounds for the protection of the public health; that while the legislature cannot prescribe, as a condition to the right to practice, knowledge which does not relate to the profession, the legislature does not have to provide for every school of medicine or every school of the healing arts which may exist

act was not unconstitutional for failing to provide for naturopaths.

[fol. 71] Every case we have thus far discussed except the *Hitchcock* case has been decided upon a full record, fully developing the facts and defining the issues. We think it sound judicial policy to decide grave constitutional questions only after the parties have had a full trial and have developed a full evidentiary record. Only this "can provide the concrete factual setting that sharpens the deliberative process especially demanded for constitutional decision" and may even avoid the need for a constitutional decision. *United States* v. *Auto Workers*, 1957, 352 U.S. 567, 591, 592. Only this can present the constitutional issue "'in clean-cut and concrete form, unclouded.'" *Naim* v. *Naim*, 1955, 350 U.S. 891. In a special concurring opinion in *Borden's Co.* v. *Baldwin*, 1934, 293 U.S. 194, 213, Mr. Justice Stone and Mr. Justice Cardozo stated:

> "We are in accord with the view that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer."

See also, *United States* v. *Petrillo*, 1946, 332 U.S. 1, 6; *Federation of Labor* v. *McAdory*, 1945, 325 U.S. 450, 460, 463; *Picking* v. *Pennsylvania R. Co.*, 1945, 151 F.2d 240, 244; *United States* v. *Foster*, 1948, 80 F.Supp. 479, 484; *Colonial Hardwood Floor Co.* v. *International Union*, 1948, 76 F. Supp. 493, 496; *Merced Dredging Co.* v. *Merced County*, 1946, 67 F.Supp. 598, 615.

In review of the cases discussed, *supra*, it is of interest to note that the Supreme Court has never changed its [fol. 72] policy of reviewing with reluctance and self-restraint state regulations in the medical field, even though other state economic regulations have met a fluctuating substantive due process standard.[11]

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[11] In the early history of the Fourteenth Amendment, state economic regulations were reviewed with a great presumption as to their validity. See cases in note 7, *supra*. Then, during the first few decades of this century, the Court struck down many of these

We have dwelled at length on the prior case law simply to determine if the law has evolved into allowing the State under its police authority substantially to outlaw an apparently useful and beneficent profession with no showing or proof otherwise, for only if that were possible could we affirm the district court. We determine that the State has no such authority.

Particularly in the field of medicine and the healing art is the State given very broad powers. But the authority to regulate is limited by some constitutional standard and that standard is defined and applied by the courts. The Supreme Court of the United States has said that a state may not regulate in this field, when the regulations

[fol. 73] " . . . have no relation to such calling or profession . . . " *Dent* v. *West Virginia*, 129 U.S. 114, 122.

" . . . [have] no real or substantive relation to those objects . . . " *Jacobson* v. *Mass.*, 197 U.S. 11, 31.

" . . . are so unreasonable and extravagant as to interfere with property and personal rights of citizens, unnecessarily and arbitrarily . . . " *Watson* v. *Maryland*, 218 U.S. 173, 178.

" . . . are arbitrary or unreasonable attempts to exercise the authority vested in it [legislature] in the public interest." *Graves* v. *Minnesota*, 272 U.S. 425, 428.

" . . . [have] no rational relation to that objective and therefore is beyond constitutional bounds." *Williamson* v. *Lee Optical Company*, 348 U.S. 483, 491.

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public health and welfare laws on substantive due process grounds. *See Lochner* v. *New York*, 1905, 198 U.S. 45; *Coppage* v. *Kansas*, 1916, 236 U.S. 1; *Weaver* v. *Palmer Bros. Co.*, 1926, 270 U.S. 402. Since then, the tide has turned back to a very expressive "judicial restraint." See *supra* in the body of this opinion the quote from *Williamson* v. *Lee Optical Company*, 348 U.S. at p. 488. This change in its policy of substantive due process review over state economic regulation is discussed thoroughly in *Lincoln Union* v. *Northwestern Company*, 1949, 335 U.S. 525, 535, 536, 537, and *Daniel* v. *Family Ins. Co.*, 1948, 336 U.S. 221, 224, 225.

Here, the allegations of the complaining chiropractors certainly place the *application* of the Louisiana Medical Practice Act to *chiropractors* squarely within the above prohibitions.[18]

We give full recognition to the State's power to regulate, reasonably and rationally, all facets of the medical field, even to excluding certain professions or specialists or schools by subjecting them to the rigid requirements [fol. 74] of medical doctors or by expressly outlawing them. But the State cannot outlaw an allegedly useful and lawful profession without a "reasonable" or "rational" basis for so doing. The plaintiffs say no such basis exists and the defendants say it does. We must, upon motion to dismiss (treated as summary judgment), take the plaintiffs' allegations as true. Thus taken, they make out a prima facie case under existing law. That is the limit to our holding.

Indeed, the burden upon the plaintiffs is great, if not insurmountable. They must show that the Act as administered "has no rational relation" to the regulation of chiropractic and "therefore is beyond constitutional bounds." *Williamson v. Lee Optical Company, supra,* 348 U.S. 483, 491. For such a determination, it is immaterial whether chiropractic is considered as a school or cult or theory or specialty or profession. That is for the legislature to determine if the plaintiffs prevail in this suit. The petition for rehearing is

DENIED.

WISDOM, Circuit Judge, Dissenting.

I regret that I cannot go along with the majority of the Court. There is not so much disagreement between us on principle as there is lack of any meeting of the minds as to the scope and effect of the Court's decision. I see the holding in this case as jostling the balance between

[18] We lay little import to the allegation that the Act is prima facie unconstitutional as investing the Board with the power to discriminate against chiropractors. Almost the exact wording in the present Act was found in the statute in *Collins v. Texas, supra,* 1912, 223 U.S. 289, allowing the Board to determine who were eligible for examination.

the states and the federal government. My learned brothers [fol. 75] do not see it that way. I respect their judgment and I know that they are concerned as I to avoid any improper extension of the authority of the federal judiciary at the expense of the reserved powers of the states. I feel bound therefore to give some of the reasons for my dissent that were not stated fully in my first opinion, originally prepared as the opinion of the Court.

My brothers expressly repudiate any attempt to supersede the authority of the state legislature; "this Court did not and would not attempt to do so." They see the question as a narrow one: the question is whether "the plaintiffs are entitled to a day in Court, to an opportunity to prove their case.

"The right to a day in Court" is a powerful cantrip as well as a fundamental maxim of justice. The spell of these words is hard to resist. Here, it is luring us from the broad highway of long accepted principles of law into tangled trails.

I cannot see what purpose will be served by giving the plaintiffs a day in court to prove that chiropractic may be a useful profession and that chiropractors are not surgeons. No one denies that chiropractic may be a useful profession. Or that some intelligent persons go to chiropractors* for treatment. Or that chiropractors whose [fol. 76] medical activities are restricted by law to adjusting subluxated vertebra by thrusting movements of the hands have no need for a knowledge of surgery and materia medica. To give the plaintiffs a day in Court for the purpose of proving these undisputed facts is to decide the case now for the plaintiffs. It amounts to holding the Louisiana Medical Practice Act arbitrary, unreasonable, and unconstitutional on its face.

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* I use the term "chiropractor" to mean a person trained in a school of chiropractic, but not in a medical school, or who is unable or unwilling to meet the eligibility standards for applicants for a license under the Medical Practice Act. Unless the context expresses a different meaning, the term does not include eligible applicants for a doctor's license or licensed doctors who engage in the practice of chiropractic.

In *Louisiana State Board of Examiners* v. *Fife, Douglas* v. *Noble, Dent* v. *West Virginia,* and *Graves* v. *Noble* evidence had to be taken because a critical issue in each case was whether the accused had in fact practiced medicine or dentistry without a license. Remanding this case will only confound the trial judge and confuse the constitutional issue.

Medical practice acts enjoy no immunity from constitutional attack. But a federal court stretches its jurisdiction beyond reasonable limits when it undertakes to say to a state: You must allow chiropractors to take examinations for a medical license, even if they cannot meet the qualifications you consider necessary for all those who practice medicine; in the alternative, chiropractors may practice medicine without a license, free from the warranties a license carries and subject to none of the special restraints legislatures consider necessary for the protection of the public from chiropractors. I do not know where we derive the power to issue such a command. There is no discrimination in statutory standards applied to all candidates for a medical license. We cannot say that the state is acting arbi- [fol. 77] trarily or unreasonably if it finds a rational connection between medical training at a reputable medical school and the practice of medicine.

Agitation for legislation authorizing licensing of chiropractors is nothing new in Louisiana. The subject comes up at every session of the legislature. It came up in the 1958 session. It is bound to come up again in 1960. It is the sort of problem the state legislature is equipped to handle. For fifty years Louisiana has weighed the merits and demerits of specifically licensing chiropractors. Because of the extremely limited medical training chiropractors receive and because of the attraction the profession of chiropractic has had in the past for quacks, it has seemed good sense to the Louisiana legislature, as to all state legislatures, not to license chiropractors under a general medical practice act unless they meet the same eligibility standards required of all candidates for a medical license; and, to license chiropractors (if at all) only by specific legislation restricting their professional activities and putting the public on notice that a doctor in chiro-

practic is not a surgeon and not a doctor competent to prescribe drugs. This is within the judgment of the legislature. It is not a judicial question. Louisiana takes its stand with Massachusetts that the dangers to the public of licensing chiropractors, as such, still out-weigh the advantages.

The plaintiffs are in the wrong forum asking for the wrong relief from the wrong lawmaker. The plaintiffs' real complaint is that the legislature has not passed [fol. 78] a law making a special exception for their benefit. Exceptions are a matter of legislative grace. It is not for us to supply the omission. The question before us is the limited one of the constitutionality of a particular statute: the reasonableness of educational requirements and other safeguards in the light of the purpose of the statute.

I do not see a federal court as ~~having any~~ right to challenge the purpose of a state law, if the purpose is lawful. The purpose of the Louisiana Medical Practice Act is to regulate the practice of medicine by providing for the licensing of doctors competent to perform surgical operations, deliver babies, and administer drugs. It is not for us to say that the purpose should be broader; that the statute should include provisions for licensing persons to practice medicine who cannot perform surgical operations, deliver babies, and administer drugs. That was not the law the Louisiana legislature passed.

The majority opinion states that the question "is whether they [chiropractors] can be constitutionally excluded from the practice of chiropractic in Louisiana." There is nothing in the statute or in its administration that denies a man the right to practice chiropractic as such. The plaintiffs are not excluded because they want to be chiropractors or because there is any exclusion of chiropractic as a profession. They are excluded because they can not or will not meet minimum standards fixed by the legislature as necessary and proper in order to be eligible to receive a license to practice medicine. It is common knowledge in Louisiana that there are a number [fol. 79] of practitioners specializing in chiropractic. But

these practitioners toed the mark set for all applicants who want a license under the Medical Practice Act. I fail to see anything discriminatory in a licensing requirement applicable to all-comers.

I do not understand the majority's statement that the plaintiffs "can claim no right to practice medicine as that practice is engaged in by medical doctors and surgeons." The complaint alleges that the Board of Examiners refuses to accept the plaintiffs as candidates eligible to stand an examination for a medical license, although the plaintiffs have diplomas from chiropractic schools. The plaintiffs allege that this is an unreasonable and arbitrary application of the statute and ask that the Board be enjoined "from so enforcing the statute complained of herein." They ask this Court to order the Board to give them examinations for a license under the Act. In other words, plaintiffs may say that they intend to practice only chiropractic—but in this suit they are demanding the same license issued to surgeons or heart specialists.

A license issued under the Medical Practice Act is a badge with a definite meaning to the public. The meaning is that the holder of such a license is a qualified surgeon and a qualified medical practitioner. It does not seem arbitrary to me that a state legislature should be able to say to its citizens that we shall try to protect you from all incompetent persons (including chiropractors) performing brain surgery, prescribing cancer cures, [fol. 80] and breaking your necks, by requiring all candidates for a medical license to have received adequate instruction in surgery and materia medica from practicing surgeons and practicing medical doctors associated with a medical college of recognized merit. It seems reasonable to me that the legislature should say, even ability to pass a written examination on surgery is not enough; a man must witness and study surgical operations actually being performed, before he can put up a sign with "Dr." in front of his name. You don't learn surgery by reading about it in a fat book.

The rationale of the Louisiana act is, that there is a reasonable connection between practicing medicine and

requiring candidates for a medical license to have adequate training in medicine, obstetrics, and surgery. If an exception is to be made for certain practitioners, such as for nurses or chiropodists or dentists, special legislation is necessary to protect the public. The experience of other states supports the reasonableness of this view.

No state allows chiropractors to be issued a license under the general provisions of a medical practice act. In every state where chiropractors are permitted to practice there is either a special act applicable to chiropractors or special provisions dealing with chiropractors.[1] In

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[1] Alabama: Title 46, Sec. 258-297, Code of 1940; Alaska: Comp. Laws 1949, Sec. 35-3-21—35-3-30; Arizona: Rev. Stat. 1956, Sec. 32-901—32-927; Arkansas: Stat. 1947, Sec. 72-401—72-414; California, Sec. 1000, 1001, Business and Professions Code; Colorado: Rev. Stat. 1953, Sec. 23-1-1—23-1-17; Connecticut: Gen. Stat. 1949, Supp. 1955, Sec. 4378—4387; Supp. 2195d—2197d; Delaware: Title 24, Sec. 701 to 716, Code Ann. 1953; Florida: Stat. Ann. 1951, Ch. 460; Georgia: Sec. 84-501—84-521, Code Ann.; Idaho: Sec. 54-701—54-714, Code 1947; Illinois: Rev. Stat., ch. 91, Sec. 1—16x; Indiana: Burns' Stat., Sec. 63-1326—63-1337; Iowa: Ch. 151, Code Ann.; Kansas: Gen. Stat. 1949, Sec. 65-1301—65-1311; Kentucky: Rev. Stat. 1953, Ch. 312; Maine: Rev. Stat. 1954, Ch. 72; Maryland: Sec. 499—514, Ann. Code 1957, art. 43; Michigan: Comp. Laws 1948, Sec. 338.151—338.159; Minnesota: Stat. Ann., Sec. 148.01—148.10; Missouri: Vernon Ann. Stat., Ch. 331; Montana: Sec. 66-501—66-517, Rev. Codes 1947; Nebraska: Rev. Stat. 1943, Sec. 71-177—71-182; Nevada: Comp. Laws 1929, Sec. 1080—1092; New Hampshire: Rev. Stat. 1955, Sec. 316:1—316:20; New Jersey: Stat. Ann., Sec. 45:9-41.1—45:9-41.16; New Mexico: Stat. 1953, Sec. 67-3-1—67-3-[illegible]; North Carolina: Gen. Stat., Sec. 90-139—90-157; North Dakota: Ch. 43-06, Rev. Code 1943; Ohio: Ch. 4731, Page's Rev. Code; Oklahoma: Stat. Ann., Title 59, Sec. 161—168; Oregon: Rev. Stat., Ch. 684; Pennsylvania: Purdon's Stat., Title 63, Sec. 601—624; Rhode Island: Sec. 5-30-1—5-30-17, Gen. Laws 1956; South Carolina: Sec. 56-351—56-361, Code 1952; South Dakota: Ch. 27.05, Code 1939, Supp. 1952; Tennessee: Sec. 63-401—63-420, Code Ann.; Texas: 4512b, Vernon's Civ. Stat.; Utah: Sec. 58-12-1—58-12-22, Code Ann. 1953; Vermont: Stat. Rev. 1947, Sec. 6757—6770; Virginia: Sec. 54-273—54-325, Code 1950; Washington: Remington's Rev. Stat., Sec. 10098—10111; West Virginia: Sec. 2998—3012, Code 1955; Wisconsin: Stat. Ann., Sec. 147.23—147.26; Wyoming: Comp. Stat. 1945, Sec. 37-701—37-717.

[fol. 81] all of these states the law, in terms, prohibits chiropractors administering drugs and medicines, performing major or minor surgery, and practicing obstetrics or osteopathy.[2] And in such states a chiropractor may hold himself out only as a doctor of chiropractic. But the purpose of the licensing provisions of the Louisiana Medical Practice Act is to authorize a person to do the very things a chiropractor is prohibited from doing in the states granting licenses to chiropractors.

[fol. 82] Four states—Louisiana, Mississippi, Massachusetts and New York—have no specific provisions licensing chiropractors or other persons to practice medicine according to a special system using no drugs or surgery. Four states—Alabama, Illinois, Ohio and Utah—do not have separate acts, but make special provision for chiropractors in the general medical practice act. Only the Alabama and Ohio acts specifically mention chiropractors; Illinois and Utah, in a general act have separate provisions for "treating human ailments without drugs or medicines and without operative surgery." The license issued in Alabama, Illinois, Ohio and Utah is based on a separate special examination and limits the practice to the system of healing taught at the applicant's school. 41 states have specific acts licensing chiropractors. These acts virtually track the language of the medical practice act of the same state, but set up a special board of examiners and prescribe special educational requirements for chiropractors. In all the 44 states allowing the practice of chiropractic, the license issued to a chiropractor is one that recognizes his limitations, restricts his pro-

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[2] For example: "A license to practice chiropractic granted by the board of examiners shall not confer upon the licensee the right to practice surgery or obstetrics, prescribe, compound or administer drugs or to administer anaesthetics"; Colorado rev. stat. 1953, ch. 23-1-2. A certificate issued to a chiropractor "shall not entitle him (or her) to practice major surgery or to prescribe or administer drugs"; Alabama Code 1940, sec. 259. "Chiropractors shall not prescribe or administer medicine to patients, perform surgery, nor practice obstetrics or osteopathy"; Georgia Code Ann. Title 84 Section 509.

fessional activities, and prevents his holding himself out as a licensee under a general medical practice act.

Thus, the considered decision of the legislatures of all the states is that chiropractors, if licensed at all, should be hedged with restrictions under special statutory provisions. This is a fair measure of the reasonableness of the Louisiana Medical Practice Act and of the reasonableness of the interpretation placed on the act by the Board of Medical Examiners. Who are we to say that all [fol. 83] the states are wrong; that two federal judges have the power to authorize chiropractors to practice medicine without a license and without any of the safeguards forty-nine state legislatures consider necessary for the protection of the public?

There is no decision in the books holding unconstitutional a medical practice act on the ground that the necessary effect of the statute is to exclude chiropractors or other persons whose limited training fails to come up to the standards required of all applicants. There is no decision in the books holding that a licensing board under a general statute acts unreasonably and unconstitutionally if it finds chiropractors ineligible for a general medical license. The Supreme Court of Louisiana has upheld the constitutionality of the act on the very contentions made in this case. The Supreme Court of the United States regarded the question as so well settled that it held recently in a similar case (involving naturopathic practitioners) that there is no federal question. *Hitchcock* v. *Collenberg*, 353 U. S. 919 (1957).

Few courts have ever admitted that they superseded the authority of a state legislature. That would be judicial lawmaking. The plain fact is, however, that courts do supersede the legislature's authority whenever they substitute their notion of reasonableness for the notion of reasonableness expressed in statutory standards. I do not quarrel with this fact of life. Judicial review of legislation is a vital part of the American governmental system, and federal courts are under a duty to supersede a state's authority whenever, in the opinion of the court, the state's [fol. 84] denial of a claimed right is so arbitrary and un-

reasonable as to amount to a denial of due process or of equal protection of the laws.

The court's duty is obvious when state action violates an express constitutional prohibition or when the Supreme Court has chartered a course lower courts must follow. Here we are on our own. In this case we are fixing a limit to state legislative action by drawing a line, known but to God and us, between what *we* think is reasonable and what *we* think is unreasonable.

In these circumstances I cast my vote for judicial restraint, relying on some well-worn generalizations. First, in the American system of government the judiciary owes a punctilious respect for the actions of the legislative branch. This may mean no more than a presumption of constitutionality. Here, it seems to me, it means that when it comes to deciding what is a reasonable regulation of the practice of medicine, the legislature is not only the appropriate body to make the decision, it is better qualified and has had more experience than the court in handling the problem. Legislators may even be as reasonable as we. Second, the effective working of the federal system depends upon federal courts showing a punctilious respect for state action. That attitude is particularly appropriate when the action is in a sphere traditionally occupied by the states, is of long standing, and is approved by the highest courts of the state. Here, the state has acted to protect the health of its citizens from the effects of ignorance and deception on the part of persons professing to practice medicine. The statutory [fol. 85] safeguards have been in effect for many years and have been approved by the Supreme Court of Louisiana and the Supreme Court of the United States. Short of a manifest, overpowering constitutional violation we should be slow to interfere with such state action. States should regulate their doctors.

This case turns on reasonableness. The reasonableness of local medical regulations is a matter of preeminent concern to the state—to its legislature that is responsible for making the laws and to its courts who are primarily concerned with the validity of the laws. The reasonable-

ness of such a law as the Louisiana Medical Practice can be (and has been) determined more appropriately and just as surely and fairly by state courts as by federal courts.

I do not cotton to a federal court allowing chiropractors to come in by the back door when the state legislature and state courts have rejected their credentials at the front door. We chip away at the federal system whenever we assume jurisdiction we do not have. We chip away at the federal system whenever the issue is primarily one for the state to decide and the existence of a federal question is doubtful but could be resolved properly against assumption of federal jurisdiction.

In *Konigsberg* v. *State Bar of California*, 1957, 353 U.S. 252, 1 L.Ed. 2d 810, 77 S.Ct. 722, Mr. Justice Frankfurter, dissenting, makes the point: "[Jurisdiction] is a matter of deep importance to the workings of our federalism." He quotes Benjamin R. Curtis: "Let it be remem- [fol. 86] bered, also,—for just now we may be in some danger of forgetting it,—that questions of jurisdiction were questions of power between the United States and the several states." 2 Memoir of Curtis, 340-341. And from Mr. Justice Stone: "Due regard for the rightful independence of state government, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Healy* v. *Ratta*, 292 U.S. 263, 270, 78 L.Ed. 1248, 54 S.Ct. 700.

This Court does not have jurisdiction unless there is a federal question. Clearly, unequivocally—or so it seems to me—the United States Supreme Court has held that there is no federal question in a case such as that now before us. *Hitchcock* v. *Collenberg*, 1957, 353 U.S. 919, 77 S.Ct. 679, 1 L.Ed. 2d 718; *Louisiana State Board of Medical Examiners* v. *Fife*, 1927, 274 U.S. 720, 47 S.Ct. 590, 71 L.Ed. 1324. The district court, therefore, correctly declined jurisdiction.

I hope that I misunderstand the effect of the majority opinion. After the plaintiffs prove that chiropractic is a useful profession and that they have no need for surgery,

materia medica, and training at a medical school, the trial judge will have no alternative except to render judgment for the plaintiffs. On appeal, this Court will have been committed to the proposition that there is no rational connection between the practice of medicine and medical training, because some persons in the practice of medicine can make a useful living with their hands and without employing a knowledge of all the medical subjects the [fol. 87] legislature regards as necessary for doctors holding a medical license. This Court is now saying to the Louisiana legislature: Chiropractors must be allowed to take examinations for a general medical license, even though they are ineligible under the licensing statute; in the alternative, the statute is unconstitutional, because the eligibility standards are not low enough to permit chiropractors to qualify. Therefore, we, the federal Court of Appeals, authorize chiropractors to practice medicine subject to none of the restrictions Louisiana and 48 other states consider essential for the protection of the public against chiropractors.

I respectfully dissent to the judgment remanding the case for trial and to the order for a rehearing.

[fol. 88]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1957

No. 16,920

D. C. Docket No. 1904 Civil

JERRY R. ENGLAND, ET AL., Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before Rives, Brown and Wisdom, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, Louisiana State Board of Medical Examiners, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Wisdom, Circuit Judge, Dissenting.

September 9, 1958.

Issued: June 17, 1959.

Recoverable Costs:
Docketing cause, etc. $25.00

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 89] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

JERRY R. ENGLAND, ET AL., Plaintiffs,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, Defendants.

ANSWER PRESENTING DEFENSES UNDER RULE 12(b)—
Filed July 16, 1959

To the Honorable, The United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

First Defense

The Complaint fails to state a claim against your defendants upon which relief can be granted.

Second Defense

I.

(a) Defendants deny the proper application of the statutes referred to in this allegation to any real issue in this action, and further specifically deny that complainants have been

threatened or denied any rights, privileges, or immunities secured by the Constitution of the United States or that they have been deprived of their civil rights as citizens of Louisiana and the United States, in violation of the Constitution and laws of the United States.

(b) Defendants deny the proper application of the statutes referred to in this allegation to any real issue in this action, and deny that complainants have any right to bring this action for the reason that they have not been deprived, under color of law or otherwise, of the rights, privileges, and immunities secured to them as citizens of the United States by the Constitution and laws of the United States.

II.

Defendants deny the proper application of the statutes referred to in this allegation to any real issue in this action, and specifically deny that complainants are entitled to injunctive relief either temporary or permanent.

III.

Defendants deny the proper application of the statutes referred to in this allegation to any real issue in the action, and further show that the Complaint does not present a [fol. 90] justiciable controversy.

(a) Defendants do not feel they are called upon to answer to the allegations of this sub-Paragraph, but in an excess of caution, deny such allegations and the proper application of the statutes referred to in the allegation, to any real issue in this action.

(b) Defendants do not feel that they are called upon to answer the allegations of this sub-Paragraph, but in an excess of caution, deny the proper application of the statutes referred to, and specifically deny any allegation of fact that may be incorporated in this sub-Paragraph.

IV.

1. Defendants deny the allegations of this sub-Paragraph.

2. Defendants admit the allegations of this sub-Paragraph.

3. Defendants admit the allegations of this sub-Paragraph.

4. Defendants admit the allegations of this sub-Paragraph.

5. Defendants admit the allegations of this sub-Paragraph.

V.

Defendants admit that the appellate courts in Louisiana have held that the practice of chiropractic constitutes the practice of medicine within the provisions and definitions of R. S. 37:1261, et seq. (Louisiana State Medical Practice Act), but otherwise deny the allegations of this sub-Paragraph, and particularly deny that said statute violates Section 1 of the Fourteenth Amendment to the Constitution of the United States and an unreasonable denial of the equal protection of the law and the civil rights, privileges and immunities of plaintiffs under the Fourteenth Amendment to the Constitution of the United States and Title 42 U.S.C., Sections 1981 and 1983.

VI.

Defendants show that the Louisiana State Medical Practice Act, and the Louisiana appellate courts' interpretation thereof, as well as its interpretation by the Supreme Court of the United States, are the best evidence of what constitutes the practice of medicine, and that said statute only exempts "licensed dentists, pharmacists, and osteopaths practicing according to law". The other groups mentioned in this Paragraph are not exempt from the provisions of said statute as a matter of practice, but are permitted to practice their limited occupations or professions by special Legislative acts. In all other respects, the allegations of this Paragraph are denied.

[fol. 91] VII.

Defendants deny the allegations of this Paragraph and particularly show that the Louisiana State Board of Medical Examiners, in setting up its rules and regulations, has not acted against chiropractors as a class, but similarly

refuses to receive applications from naturopaths, bee-stingers, operators of mechanical and electrical appliances, other cults, and graduates of medical schools which do not fulfill the requirements of an acceptable medical school.

VIII.

Defendants deny the allegations of this Paragraph.

IX.

Defendants deny the allegations of Paragraph IX of the Complaint, and refers to its previous answer to Paragraph VI of the Complaint, wherein it was pointed out that the named groups were permitted to practice in a limited field in their occupations or professions by Legislative acts.

X.

Defendants deny the allegations of this Paragraph.

XI.

Defendants deny the allegations of this Paragraph, and further answering, show that no chiropractor, as such, has ever applied to the Louisiana State Board of Medical Examiners to stand the requisite examination before the said Board.

XII.

Defendants deny the allegations of this Paragraph as alleged, and further show that they cannot answer the allegations of this Paragraph insofar as it alleges certain acts by the Louisiana State Medical Society. Defendants do show affirmatively that they consider that chiropractors and other cultists, as well as unqualified medical school graduates, are a definite menace to the general health of the public of the State of Louisiana.

XIII.

Defendants deny the allegations of this Paragraph as alleged, and show that the Louisiana State Board of Medi-

cal Examiners is merely following the intent and dictates of the Legislature of Louisiana in providing by its rules and regulations that an applicant to take the examination for the purpose of securing a medical certificate or license must be a graduate of a "Class A College Standard American Medical Association" or the equivalent (R. S. 37:1275). Defendants further show that graduates from chiropractic colleges do not study and are not trained in either materia [fol. 92] medica or surgery, which are two of the examinations required by the Medical Practice Act (R. S. 37: 1271).

XIV.

Defendants deny the allegations of this Paragraph, but show that while the Board is generally guided by the Association of American Medical Colleges and the Council on Medical Education and Hospitals of the American Medical Association, that their rules and regulations permit them to accept applications for the licensing examination from other medical schools that are equivalent.

XV.

Defendants deny the allegations of this Paragraph as alleged but admit that they have sought to enforce in the courts the mandatory provisions of the Louisiana State Medical Practice Act, and that such decisions as have been rendered by the courts of the State of Louisiana have been the independent construction by such courts of the various provisions of the Louisiana State Medical Practice Act.

XVI.

Defendants deny the allegations of this Paragraph.

XVII.

Defendants deny the allegations of this Paragraph.

XVIII.

Defendants deny the allegations of this Paragraph.

XIX.

Defendants admit that they have enforced and intend in the future to enforce the various provisions of the Louisiana State Medical Practice Act, with respect to the practice of medicine in Louisiana, but in all other respects, deny the allegations of this Paragraph, and in particular deny that they have enforced or will enforce such statutes against complainants, because they are chiropractors, your defendants alleging that they intend to enforce the provisions of such statute against all persons practicing medicine in the State of Louisiana who do not possess medical licenses to practice medicine issued by the Louisiana State Board of Medical Examiners.

XX.

Defendants deny the allegations of this Paragraph.

Third Defense

Defendants affirmatively show that R. S. 37:1261 et seq. [fol. 93] (Louisiana State Medical Practice Act) is constitutional, both under the Constitution of the State of Louisiana and the Constitution of the United States.

Fourth Defense

Defendants show that they have acted and enforced, and will in the future act and enforce the provisions of R. S. 37:1261, et seq. (Louisiana State Medical Practice Act) in accordance with the provisions of such statute, and in a fair and reasonable way, and without discriminating against any particular class group, such as chiropractors, and have not and will not act nor enforce the provisions of such statute in an arbitrary, discriminatory, or capricious manner.

Wherefore, defendants pray that the respective demands of the Complaint, and each of them, be dismissed, at plaintiffs' cost.

And for such general and equitable relief as may seem meet to this Honorable Court.

Adams and Reese, St. Clair Adams, Jr., Trial Atty.,
Attorneys for Defendants.

New Orleans, Louisiana
July 16, 1959

Certificate of Service (omitted in printing).

[fol. 94] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

[Title omitted]

ANSWER OF INTERVENOR, LOUISIANA STATE MEDICAL SOCIETY —Filed August 5, 1959

To the Honorable, the United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

Louisiana State Medical Society, a non-profit corporation organized and existing under the laws of the State of Louisiana, having moved for leave to intervene herein as a party defendant, makes the following answers to the allegations of the complaint of plaintiffs:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

I.

(a) Defendant-intervenor denies that the jurisdiction of this Court is properly invoked under Sections 1331, 1981 and 1983 of Title 28 of the United States Code, or any of

the said sections, and especially and specifically denies that plaintiffs have been deprived or denied, or have been threatened with deprival or denial, as citizens of the United States, of the full and equal benefit of all of the laws, rights, privileges and/or immunities secured by the Constitution or laws of the United States.

(b) Defendant-intervenor denies that the jurisdiction of this Court is properly invoked under Section 1343(3) of Title 28 of the United States Code, and especially and [fol. 95] specifically denies that plaintiffs have been deprived of, or denied, as citizens of the United States, any right, privilege and/or immunity secured by the Constitution or laws of the United States.

II.

Defendant-intervenor denies that the jurisdiction of this Court is properly invoked under Sections 2281 and 2284 of Title 28 of the United States Code, and especially and specifically denies that plaintiffs are entitled to injunctive relief, either temporary or permanent.

III.

Defendant-intervenor denies that this proceeding is properly brought as a declaratory judgment action pursuant to Sections 2201 and 2202 of Title 28 of the United States Code, and especially and specifically denies that an actual controversy exists herein. For lack of sufficient information to justify a belief therein, defendant-intervenor denies each and every factual allegation incorporated in subparagraphs (a) and (b) of Paragraph III of the complaint.

IV.

(1) Defendant-intervenor denies the allegations of subparagraph (1) of Paragraph IV of the complaint.

(2) Defendant-intervenor admits the allegations of subparagraph (2) of Paragraph IV of the complaint.

(3) Defendant-intervenor admits the allegations of subparagraph (3) of Paragraph IV of the complaint.

(4) For lack of sufficient information to justify a belief therein, defendant-intervenor denies the allegations of subparagraph (4) of Paragraph IV of the complaint.

(5) Defendant-intervenor admits the allegations of subparagraph (5) of Paragraph IV of the complaint.

V.

Defendant-intervenor denies the allegations of Paragraph V of the complaint, except to admit that the Courts of the [fol. 96] State of Louisiana have repeatedly and consistently held that, under the law of Louisiana, the practice of chiropractic constitutes the practice of medicine within the terms and provisions of the Louisiana State Medical Practice Act, La. R.S. 37:1261, ff.

VI.

Defendant-intervenor denies the allegations of Paragraph VI of the complaint, except to admit that the Louisiana State Medical Practice Act exempts from its terms "licensed dentists, pharmacists, and osteopaths practicing according to law." In further response to the allegations of Paragraph VI of the complaint, defendant-intervenor shows that nurses, chiropodists, optometrists, homeopaths, pharmacists, midwives and opticians are permitted to practice their limited occupations or professions by special and specific legislative acts which are restrictive and regulatory in nature; and further shows that whether or not the practice of chiropractic should or should not be permitted in Louisiana on a restricted and regulated basis is a matter and question which addresses itself to the sound judgment of the Legislature of the State of Louisiana, and is not a judicial question properly before this Court.

VII.

Defendant-intervenor denies the allegations of Paragraph VII of the complaint. In further response to the allegations of Paragraph VII of the complaint, defendant-intervenor alleges upon information and belief, that the

Louisiana State Board of Medical Examiners has not discriminated against chiropractors as a class but has denied to cultists and improperly and insufficiently trained persons other than chiropractors, the right to practice medicine in Louisiana for the same reasons and upon the same bases that such right is denied chiropractors.

VIII.

Defendant-intervenor denies the allegations of Paragraph VIII of the complaint.

[fol. 97]

IX.

Defendant-intervenor denies the allegations of Paragraph IX of the complaint, and in further response to the allegations of Paragraph IX reavers its answer to Paragraph VI herein.

X.

Defendant-intervenor denies the allegations of Paragraph X of the complaint.

XI.

For lack of sufficient information to justify a belief therein, defendant-intervenor denies the allegations of Paragraph XI.

XII.

Defendant-intervenor denies the allegations of Paragraph XII of the complaint and specifically and emphatically denies that it is a party to a conspiracy against plaintiffs or the practice of chiropractic in general; but defendant-intervenor admits that the practice of chiropractic, as well as the practice of medicine by unskilled, untrained and unqualified persons and other cultists is detrimental to the health and welfare of the general public of the State of Louisiana.

XIII.

Defendant-intervenor denies the allegations of Paragraph XIII of the complaint, and especially and specifically

denies that graduates of the school of chiropractic are qualified to practice medicine in the State of Louisiana; and in further answer to the allegations of Paragraph XIII of the complaint, defendant-intervenor avers, on information and belief, that, in Louisiana State Board of Medical Examiners' refusal to recognize that chiropractic schools are schools in good standing in the teaching of healing arts, the said Board is adhering to standards established by the Legislature of the State of Louisiana and is administering Louisiana State Medical Practice Act strictly in accordance with the dictates and the will of the said Legislature.

[fol. 98]

XIV.

For lack of sufficient information to justify a belief therein, defendant-intervenor denies the allegations of Paragraph XIV of the complaint.

XV.

For lack of sufficient information to justify a belief therein, defendant-intervenor denies the allegations of Paragraph XV of the complaint; and in further answer to the allegations of Paragraph XV, defendant-intervenor reavers its answer to Paragraph XIII of the complaint herein.

XVI.

Defendant-intervenor denies the allegations of Paragraph XVI of the complaint.

XVII.

Defendant-intervenor denies the allegations of Paragraph XVII of the complaint.

XVIII.

Defendant-intervenor denies the allegations of Paragraph XVIII of the complaint.

XIX.

For lack of sufficient information to justify a belief therein, defendant-intervenor denies the allegations of Paragraph XIX of the complaint.

XX.

Defendant-intervenor denies the allegations of Paragraph XX of the complaint.

Third Defense

Defendant-intervenor affirmatively shows that the Louisiana State Medical Practice Act, La. R.S. 37:1261, ff., is constitutional both under the Constitution of the State of Louisiana and the Constitution of the United States.

Fourth Defense

Defendant-intervenor affirmatively shows that the Louisi-
[fol. 99] ana State Medical Practice Act, R.S. 37:1261, ff., as administered by the Louisiana State Board of Medical Examiners, is constitutional both under the Constitution of the State of Louisiana and the Constitution of the United States.

Wherefore, defendant-intervenor prays that the respective demands of plaintiffs, and each of them, be dismissed at their costs and for all other general and equitable relief as is deemed proper by this Court.

Phelps, Dunbar, Marks, Claverie & Sims, By Ashton Phelps, Blake West, Philip E. Henderson, 420 Hibernia Bank Building, New Orleans 12, Louisiana.

New Orleans, La.
August , 1959

Certificate of Service (omitted in printing).

[fol. 100] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

[Title omitted]

ORDER DESIGNATING THREE-JUDGE COURT—August 10, 1959

The Honorable J. Skelly Wright, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Richard T. Rives, Chief Judge of the Fifth Circuit, hereby designate the Honorable Warren L. Jones, United States Circuit Judge, and the Honorable Herbert W. Christenberry, United States District Judge for the Eastern District of Louisiana, to serve with Judge Wright as members of, and with him to constitute the said court to hear and determine the action.

Witness My Hand this 10th day of August, 1959.

Richard T. Rives, Chief Judge, Fifth Circuit.

[fol. 101]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
9292 CA

[Title omitted]

MINUTE ENTRY OF ORDER GRANTING MOTION TO INTERVENE —August 19, 1959

It Is Ordered by the Court that the motion of Louisiana State Medical Society to intervene as party defendant be and the same is hereby Granted.

J S W

[fol. 103] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed October 20, 1959

Comes Now Plaintiffs who respectively move the Court to enter in their favor a summary judgment, holding the Louisiana Medical Practice Act unconstitutional and granting to plaintiffs the injunctive relief prayed for, for the reason that there is no genuine issue as to any material fact, and plaintiffs are entitled to relief as a matter of law.

In support of this motion, plaintiffs pray that the Court consider, as provided for by rule 56, Federal Rules of Civil Procedure, the pleadings, depositions, affidavits, exhibits, and admissions filed herein in connection with both, this motion and the motion for temporary injunction.

From the attached documents it is plain that:

A. Chiropractic is a useful profession.

B. Defendant board and the officers thereof, have arbitrarily and capriciously, without warrant of law, established a requirement that applicants for license present a diploma from schools approved by the American Medical Association, and they refuse arbitrarily and capriciously to consider any applicant presenting a chiropractic diploma for the only reason that it comes from a chiropractic school.

C. The statutory requirement that applicants pass ex-
[fol. 104] amination in materia medica and surgery bears no reasonable relation to the practice of chiropractic, and therefore is a wholly unreasonable requirement, because chiropractic is a drugless system of therapeutics and involves no surgical procedure.

D. Application of this statute to chiropractors is discriminatory and denies plaintiffs equal protection of the laws, in as much as the regulatory patterns of the state law provides specially for osteopathy, op-

tometry, chiropody, cosmetic therapy, dentistry, pharmacy, nurses, and other professions in the healing arts, in all of which members of the regulated profession participate; whereas, chiropractors are literally suppressed and outlawed by officials with no knowledge of a subject, arbitrarily refusing to consider their qualifications.

E. Further discriminating against chiropractors, the defendant board and its officers, and the intervenor, Louisiana Medical Society, have sponsored, encouraged and cultivated a separate class of unlicensed persons practicing medicine in Louisiana without in-
[fol. 105] terference, known as Physical Therapists.

J. Minos Simon, Attorney At Law, 301 E. Congress St., Lafayette, Louisiana;

Floyd J. Reed, Attorney At Law, Maison Blanche Building, New Orleans, Louisiana;

Russell Morton Brown, Attorney At Law, 605 Southern Building, Washington, D. C.

Of Counsel for Plaintiffs.

[fol. 107] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

[Title omitted]

MOTION TO FILE DEPOSITION—Filed October 30, 1959

Now Comes, Louisiana State Board of Medical Examiners, Dr. Rhett McMahon, President of Louisiana State Board of Medical Examiners, and Edwin Hugh Lawson, Secretary-Treasurer of Louisiana State Board of Medical Examiners, made defendants herein, and file herewith a copy of testimony of Drs. Rhett McMahon and Edwin Hugh

Lawson taken on September 28, 1959 by Attorneys representing the plaintiffs. This deposition is filed in rebuttal to some of the statements contained in Affidavits heretofore filed by plaintiffs.

Robert E. LeCorgne, Jr., Adams and Reese, By: St. Clair Adams, Jr., 847 National Bank of Commerce Bldg., New Orleans, Louisiana.

Certificate of Service (omitted in printing).

[fol. 109]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 9292

JERRY R. ENGLAND, et al., Plaintiffs

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Defendants

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Depositions of Drs. Rhett McMahon and Edwin Hugh Lawson

Testimony of Drs. Rhett McMahon and Edwin Hugh Lawson, Taken at New Orleans, Louisiana, Pursuant to Notice, on September 28, 1959.

APPEARANCES:

Russell Marton Brown, Esq., J. Minos Simon, Esq., Floyd J. Reed, Esq., Attorneys for Plaintiffs;

Ashton Phelps, Esq., Blake West, Esq., Attorneys for Intervenors, Louisiana State Medical Society;

St. Clair Adams, Jr., Esq., Robert E. LeCorgne, Esq., Attorneys for Defendants;

Joseph H. Echezabal, Notary Public, Official Court Reporter, Civil District Court, Parish of Orleans, State of Louisiana.

[fol. 110] Stipulation

It is stipulated and agreed by and between Mr. St. Clair Adams, Jr., Esq., Attorney for the Defendants and Russell Marton Brown, Esq., Attorney for Plaintiffs, that upon the certificate of the court reporter, that the testimony has been truly transcribed and the signatures of the witnesses will be waived.

DEPOSITION OF DR. RHETT MCMAHON

DR. RHETT MCMAHON, 310 Convention Street, Baton Rouge, Louisiana, called and after first being duly sworn, testified as follows:

By Mr. Brown:

Q. Doctor, you have an office in Baton Rouge?

A. Yes.

Q. You are there practicing as a doctor of medicine, is that correct?

A. That is correct.

Q. I take it that you are a member of the State Medical Association?

A. I am.

Q. Are you also a member of the American Medical Association, Doctor?

A. I am.

Q. Now, how long have you been on the Board, Doctor?

A. Since 1939.

[fol. 111] Q. And you are now President of the Board, is that correct, Doctor?

A. That is correct.

Q. Now, for the record, will you state—

A. When you refer to the Board, you mean the Louisiana State Board of Medical Examiners?

Q. Yes, sir. Can we stipulate that when I say Board, that I mean the Louisiana State Board of Medical Examiners?

A. All right.

Q. Are you able, Doctor, to tell us for the record who the other members of the Board are at this time?

A. Doctor Robert F. Lucas, J. Morgan Lyons, Edmond L. Leckert, Edmond Hugh Lawson, all M.D.'s.

Q. Are they also practicing M.D.'s?

A. They are.

Q. Are they also all members of the State Medical Association?

A. They are.

Q. Are they also members of the American Medical Association?

A. I can't answer that question.

Q. I would like to inquire, Doctor, for my own information, does the membership in the State Medical Association automatically impart membership in the American Medical Association or vica versa?

A. Which are you asking?

[fol. 112] Q. Well, I would be glad to be informed.

A. You must be a member of the State Society to belong to the American, but not vica versa.

Q. Thank you. So, you actually don't know whether the other members of the Board are members of the American Medical Association?

A. That is right.

Q. Now, your appointment to the Board was made by the Governor of Louisiana, is that correct?

A. That is correct.

Q. These appointments were made as a result of nominations made by the State Medical Association, is that correct?

A. No. They recommend a list, they submit a list of names to the Governor.

Q. Thank you, Doctor. Now, just for my own information, Doctor, can you tell me how is this list arrived at?

A. Well, it is arrived at by the members of the House of Delegates of the Louisiana State Medical Society through nominations and in the ordinary way of electing any group of people.

Q. Thank you, Doctor. Now, your compensation, as a

member of the Medical Board, is provided for by statute. You are familiar with that, Doctor?

A. Yes, sir.

Q. Do you receive any other compensation from the State [fol. 113] Medical Association for serving on the State Medical Board?

A. None whatsoever.

Q. Do you receive any compensation of any kind from the State Medical Association?

A. None whatsoever.

Q. Thank you. Now, the Board has a fund of its own for use in carrying out its statutory duties, am I correct?

A. That is right.

Q. And, the sources of this fund, as I read the statute, are license fees, also fines which are levied upon unlicensed practitioners and if there is any other source of funds that the Board has, I would like for you to tell us.

A. Well, you didn't mention the most numerous, renewal fees.

Q. I thank you, Doctor. They are set out in part 37:1281. Would you say, Doctor, that those are the only sources of funds that the Board has?

A. Oh, we may get—this, I am not too familiar with, but I think we do have some bonds that we get a little interest on.

Q. In other words, the funds of the Board are invested?

A. A certain amount, certainly.

Q. Can you tell me, please sir, whether or not there are any legislative appropriations for the Board's purposes?

A. None whatsoever.

[fol. 114] Q. None at all?

A. As you will see under section—

Q. We don't need the section, Doctor.

A. Part 37:1268.

Q. Now, it becomes your function, among others, to pass upon the treatment of unlicensed practitioners under the statute, is that correct?

A. No one is allowed to practice medicine in the State of Louisiana until he has a certificate from the Board.

Q. Yes, sir. And, in the event any person should undertake the practice of medicine without a certificate from the

Board, it is then the Board's function to see that that practice stops?

A. That is correct.

Q. And, for that purpose, you have authority, under the law, to engage counsel?

A. Correct.

Q. And the counsel whom you have engaged is Mr. St. Clair Adams who sits with us today, is that correct?

A. Yes, sir.

Q. Is there any other person that the Board has as counsel, or is Mr. Adams the only one?

A. Mr. LeCorgne is our attorney.

Q. Messrs. Adams and LeCorgne?

A. That's right.

[fol. 115] Q. They are the Board's attorneys?

A. That's right.

Q. Are they on equal status, or is one considered chief counsel and the other considered assistant, what is the arrangement?

A. Adams and Reese, is the chief counsel.

Q. And, Mr. LeCorgne is associated with them, is that correct?

A. In their firm?

Q. No, in representing the Board.

A. Yes, sir.

Q. I just wanted to clarify that. Now, in order to put an end to an unlicensed practitioner, unlicensed by the Board, you, as a Board, have to take certain action directly or you authorize your attorneys to proceed in legal manner, is that true, Doctor?

A. I don't think I understand your question.

Q. Well, when it comes to your attention that there is a case of an unlicensed practice of medicine, the Board takes action to inform its attorneys and directs and authorizes them to take appropriate steps to put a stop to it, is that correct?

A. Correct.

Q. Tell me, if you can, Doctor, how the Board goes about that? Does it hold a formal meeting and pass a resolution or something of that sort?

[fol. 116] A. All by formal action of the Board.

Q. They do pass formal actions, is that my understanding? Is that correct?

A. They do pass formal actions.

Q. They do pass formal resolutions, is that correct?

A. Correct.

Q. Now, are these resolutions kept in permanent records, Doctor?

A. Yes, sir.

Q. And, where are those records kept?

A. In the offices of the Louisiana State Board of Medical Examiners.

Q. And, where is that?

A. 930 Hibernia Bank Building.

Q. In New Orleans?

A. In New Orleans.

Q. Are you able to tell us, Doctor, how many formal resolutions the Board has passed since you have been on the Board with respect to prohibiting the practice of chiropractic?

A. No, I cannot.

Q. I take it, then, that you also would not be informed as to how many criminal prosecutions there have been against chiropractors?

A. No, I don't know.

[fol. 117] Q. I am not testing your recollection, Doctor; I'm just trying to find out.

A. I understand.

Q. You do know, however, that there have been numerous suits for injunctions against the chiropractors to prohibit them from the practice of their profession?

A. Yes, I know that.

Q. You do know that there have been numerous criminal prosecutions brought against chiropractors?

A. Yes. I think the district attorneys of the state have brought several criminal suits against alleged violators of the Medical Practice Act.

Q. Does the Board participate in those criminal prosecutions?

A. If they ask—the Board?

Q. The Board or its representatives.

A. Well, the attorneys will assist if the district attorneys so desire.

Q. Now, you, yourself are an M. D., a doctor of medicine, is that correct?

A. Yes. As I stated in the beginning, yes.

Q. Where did you take your medical training, Doctor?

A. Tulane.

Q. And that school is a school approved by the American Medical Association, is that true?

A. It is.

[fol. 118] Q. Now, in the course of your studies, I take it that you are not required to take courses in chiropractic treatment?

A. Not as such.

Q. When you say not as such, do you mean as something else?

A. Well, I will say no to the question.

Q. And, I presume that you have not been given any special studies of chiropractice since, have you?

A. If you will explain what you mean by special, I will be glad to answer that.

Q. I think I mean, have you taken any courses in chiropractic?

A. No.

Q. Have you made any—has the Board, itself, made any official evaluation of chiropractic treatment, that is, of the benefits of chiropractic treatment, the results achieved, the techniques used?

A. Individually, I think the Board members have studied and read up on chiropractic, yes.

Q. Has the Board, itself, made any official evaluation of chiropractic treatment?

A. No.

Q. Would you say then, Doctor, that you are personally thoroughly familiar with chiropractic principles, theory and practices?

A. I am fairly well posted on it, yes.

[fol. 119] Q. And where did you develop this information?

A. By reading.

Q. What have you read, Doctor?

A. Let's see. I read Chiropractic Clinical Controlled Research, Palmer, Volume 25, 1951; Answers, Palmer, Volume 28, 1952.

Q. Doctor, would you spell the name of the second author?

A. There is no second author, volume so and so.

Q. What was the second treatise?

A. Answers.

Q. Would you spell that please?

A. A-n-s-w-e-r-s. Conflicts Clarify, Palmer, Volume 26, 1951. Up from the bottom.

Q. Are those two separate works?

A. These are all separate. Yes. I am enumerating them.

Q. Doctor, are you not familiar?

A. No, I am not familiar.

Q. You might make that list of material available for the record?

A. No, this is my list.

Q. Who are the authors?

A. B. J. Palmer.

Q. Good.

A. The Bigness of the Fellow Within, Chiropractic Philosophy Science and Art, Fight to Climb, Fame and Fortune, The Science of Chiropractic, The Art of Chiropractic by [fol. 120] R. W. Stephenson, 1947, Chiropractic Practice, Volume 1 Infectious Diseases by F. F. Wells, D.O., D.C. and Volume 2, Diseases of the Digestive System by Joseph Janse, D.C., Chiropractic Principles and Technic by Joseph Janse, D.C., R. H. Houser, D.C., and B. F. Wells, D.O., D.C., and History Repeats, Palmer, Volume 27, 1951.

Q. Doctor, can you tell us when you did this reading?

A. Oh, over the past several years.

Q. When did you begin?

A. Well, I don't know exactly when.

Q. Tell us approximately.

A. Oh, I guess I read this five or six years ago.

Q. Have you done any of that reading since the present litigation began?

A. Yes.

Q. Can you tell us which of those works you have read since the litigation began?

A. Outside of the Chiropractic Philosophy Science and Art by Palmer, most of Palmer's other works that I have enumerated.

Q. I presume that you knew Doctor Harrison, your former Secretary of the Board?

A. Yes, I did.

Q. I am informed, and I would be glad to be corrected if I am in error, that Doctor Harrison once testified under [fol. 121] oath in a prior litigation of some kind, is that correct? Do you know about that?

A. Yes, he has testified in litigation.

Q. Can you tell us some of the things that he stated in the course of his testimony, Doctor, and I presume that there has been very little change in the Board's policy and I would like to ask you if Doctor Harrison stated that the Board required as a prerequisite to examination of an applicant for medical license, that he present a diploma from a medical school approved by the American Medical Association. Is it still one of the Board's rules that this is such a requirement?

Mr. Adams: May I ask counsel to place the time and place that Doctor Harrison is supposed to have made such a statement?

Mr. Brown: I am informed that it was approximately 1947, although I am not sure, Mr. Adams. It was attached to the original complaint in this action.

Mr. Adams: Wasn't that in 1934?

Mr. Reed: 1948.

Mr. Brown: Can we agree that that is the date?

[fol. 122] Mr. Adams: I can't agree since I don't know.

By Mr. Brown:

Q. Maybe Doctor McMahon knows.

A. No, I don't.

Q. Doctor, in connection with the initiation of this litigation, a copy of that testimony by Doctor Harrison has been attached. Did you read it?

A. Yes, I read the testimony, I have not seen the exhibits.

Q. Well, it was attached to the complaint and I just wondered if you read it.

A. No, I have not seen the exhibits.

Q. Well, now, the requirement that Doctor Harrison testified to was that an applicant would be required to present a diploma of a medical school approved by the American Medical Association. Is that still the rule?

A. This is the rule as of now. "The Board accepts as 'a college in good standing' those American and Canadian colleges that have a rating of 'Class A Medical College' or 'Approved Medical School' by the Association of American Medical Colleges and/or The Council on Medical Education and Hospitals of the American Medical Association."

Q. The Association of American Medical Colleges is the first one that you mentioned, is that correct?

[fol. 123] A. Association of American Medical Colleges.

Q. Is that connected or affiliated with the American Medical Association, Doctor?

A. I don't know of any connection except that they work jointly on some committees.

Q. And how do you, as a matter of information, know that a school from which an applicant presents a diploma is one of the approved schools?

A. The council on Medical Education and Hospitals of the A. M. A. puts out an educational journal every year in which they list those schools.

Q. And, you don't look behind that in anyway? You don't go behind that fact that a school is so listed to determine for yourself whether it is a proper school or not, am I correct?

A. No. I have just stated that we accept those schools that I have just outlined.

Q. Yes, I am just trying to clarify it, Doctor. Now, if a person should present to you an application with a diploma from some school not so listed, you would decline to examine him, is that correct?

A. It would depend on where the school was and other things.

Q. Tell us, Doctor, when was this rule with regard to acceptance of this listed schools first adopted, if you know?

A. The exact date, I do not know.

[fol. 124] Q. It was prior to your coming on the Board, wasn't it?

A. I think that was the policy when I came on the Board.

Q. Now, you say that if a person should present a diploma from a school other than one listed, your actions would depend on where the school was and other circumstances. Is that a matter of rule? Do you have a rule to that effect that you will consider other factors, other schools?

A. The question has never been presented to us except in the case of Class B schools. Yes, we would refuse—days gone by, the A. M. A., this council on Medical Education and Hospitals of the American Medical Association rated their schools Classes A, B and C and if it did not have a Class A standard which, by the way for example, is set by the Legislature by requiring such qualifications under Article—

Q. Well, Doctor, you don't have to justify your actions.

Mr. Phelps: I don't believe the Doctor is finished answering the question.

A. I am going to finish. We have all night and a couple of days.

By Mr. Brown:

Q. All right.

A. Yes, I think maybe the gentleman's interrupting is by use of old political tactics to confuse.

[fol. 125] (Colloquy.)

By Mr. Brown:

Q. Doctor, you may feel at liberty to make your answers as you see fit.

A. I would like to have the question read back.

(The question was read back to the witness.)

A. The Board would take into consideration and apply the provisions of the Medical Practice Act Part 37:1275, to see if the specifications were met. In the case of past

years when the council on Medical Education and Hospitals have a different way of classifying schools, different than that used in classifying them as A, B and C, the Board as a rule, had a rule not to accept any Class B or Class C schools. We do not accept graduates of any foreign medical schools, except that we do not consider Canada a foreign state.

Q. Doctor, I am not sure that the answer is complete. Does the Board limit the applicants, now, to Class A schools, or does it consider other schools?

A. If other schools were presented, I am sure the Board would want to investigate to make a decision.

Q. Now, you are speaking now, Doctor, of schools that are listed by the American Medical Association?

A. I am talking of any school. I thought your question said schools, schools that were not listed.

[fol. 126] Q. I meant not listed as Class A. Let me clarify it, please, Doctor. I am sorry if we have gotten off the track. As I understand it, now, the Board does accept the schools that are listed as Class A, correct?

A. Correct.

Q. Does the Board also accept schools listed as Class B, or Class C?

A. No.

Q. Now, with respect to the schools that are not listed at all, what action does the Board take?

A. That proposition has never been presented to the Board within my recollection.

Q. Fine.

A. Except, the foreign schools. I don't believe that the A. M. A. lists all of those and there is a rule of the Board that they do not accept graduates of foreign medical schools at this time and they are not listed by the A.M.A.

Q. I understand, Doctor, thank you. Now, if a person should present a diploma from, say the Palmer School of Chiropractic, would the Board permit him to be examined?

A. That is a question that has never been presented to the Board, because no graduate of the Palmer School of Chiropractic has ever presented to the Board a formal, completed application, so there has been no necessity on the part of the Board to make such a ruling. However, I

[fol. 127] am sure that the Board would give the matter full consideration and would go into the matter to see whether the qualifications and specifications of the Medical Practice Act could be fulfilled by such a school.

Q. You have told us, I believe, that you read Doctor Harrison's testimony?

A. Yes, I have read Doctor Harrison's testimony.

Q. You are aware, I suppose, Doctor, that he said that the Board would not accept a diploma from any chiropractic school. Now, has the Board, by rule, changed its position since that time?

A. That was his personal opinion. I don't believe he stated it as a rule of the Board.

Q. Well, as I understand the rules of the Board, perhaps it would be best then if these rules—are these rules formally written out, the rules of the Board?

A. Yes, over the years.

Q. They are made a matter of record in the Board's policy, is that correct?

A. Correct.

Q. Is it possible for us to have for the record, in this case, a set of the Board's formal rules, in this case?

A. I doubt if that could be done within the time that is allowed by the court for this case. That would mean going back to the minutes over the years and getting out all of [fol. 128] those resolutions.

Q. I mean, only with regard to schools and the type schools.

A. You would have to go through every minute, the minutes of every meeting.

Q. Well, maybe we can save all of that trouble, Doctor, if you can tell us what are the formal rules of the Board with regard to diplomas which will be determined as to the qualifications of an applicant. I believe you told me, please correct me, if I'm in error, I believe you told me that the Board has a rule, a formal rule, that it accepts diplomas from medical schools listed as Class A on the list published by the American Medical Association. Am I correct, Doctor?

A. My answer would speak for itself there, Mr. Brown.

Q. I am just trying to save the necessity of looking at all of the Board's formal rules.

A. I would be glad to repeat my answer for you.

Q. Well, suppose you do that.

A. The Board accepts as "a college in good standing" those American and Canadian schools that have a rating of "Class A Medical College" or "Approved Medical School" by the Association of American Medical Colleges and/or The Council on Medical Education and Hospitals of the American Medical Association.

Q. Now, you have been reading from a document in front [fol. 129] of you, Doctor, is that an excerpt from the Board's formal rules?

A. No, this is my own wording. This was just put down to clarify and simplify and expedite a question that I anticipated.

Q. Yes, and it is intended by you, I take it, to represent the general overall effect of the Board's rules on the subject, is that correct?

A. I have made the bland statement that the Board accepts these.

Q. Well, is that statement of yours intended to express the general status of the Board's formal rules on the subject?

A. Yes.

Q. That is all I wanted to know.

A. All right.

Q. I just wanted to be sure, myself. Now, is there any rule, Doctor, any formal rule that the Board has adopted which modifies that rule in anyway?

A. No, I don't think so. The only other rule that might apply is to graduates of foreign medical schools, but, I have stated here that American and Canadian colleges—

Q. Well, we are not interested in foreign schools, I am satisfied with your answer, thank you.

A. Yes, sir.

Q. Now, you have told us that if a person presented a [fol. 130] diploma from the Palmer School of Chiropractic that the Board would have to look into the matter further, is that your answer to this, at this moment, Doctor?

A. The Board had never had such a diploma presented to it and, therefore, I could not answer as to what the Board would do, but I think they would investigate the situation and check the qualifications of the Palmer School of Chiropractic to see whether the quality of their equipment, the quality of their educational standards and of their teachers and everything met the requirements of the schools that we do accept.

Q. Now, if you found that it prepared its students adequately for the practice of chiropractics, would you then issue a license to practice chiropractics?

A. The Board has no authority to issue such a certificate for chiropractic.

Q. Exactly.

A. I will continue this way. The jurisprudence in Louisiana is that the practice of chiropractic is the practice of medicine. Therefore, anyone meeting those qualifications as set forth in the medical practice act would need and would be required to have a certificate to practice medicine. Of course, the meeting of the qualifications as laid down by this medical practice act would require that according to these sections, Part 37:1271, that they pass an examina-[fol. 131] tion before the Board upon the following subjects: anatomy, physiology, chemistry, obstetrics, gynecology, physical diagnosis, surgery, pathology, materia medica, theory and practice of medicine, and hygiene. And, since all of those must be passed to get a certificate to practice medicine, a school would be approved, to be approved, must of necessity teach those subjects otherwise a student from those schools would not be prepared to pass these subjects.

Q. I presume from your reading that you are familiar with the fact that the chiropractic do not use drugs or administer drugs, isn't that correct, Doctor?

A. Yes, sir.

Q. And they do not resort to any surgical procedure, is that correct?

A. They teach obstetrics, which is surgery.

Q. Very well. Then, aside from that, they do not resort to surgical procedure, is that correct?

A. That's right, but excuse me—

Q. No, go right ahead.

A. No, I have answered your question.

Q. Thank you, sir. I wanted to be sure that the reporter had all that you wanted to say. Do you know anything of your own knowledge with respect to referrals of an M.D., and I use that as shorthand for physician, doctor of medi-
[fol. 132] cine, references by M.D. to chiropractors? Have they referred patients to chiropractors for special treatment?

A. I know of no such referrals.

Q. Do you know of referrals by chiropractics to M.D.'s?

A. I have had no professional contact with any chiropractors.

Q. Is that accidental or a matter of policy on your part?

A. They are illegal practitioners in the State of Louisiana and I am not going to lay myself wide open to be associated with illegal practitioners of medicine in the State of Louisiana.

Q. Now, after a person has been licensed to practice medicine in the State of Louisiana, he practices in any manner and uses any treatment that he may personally feel advisable, is that correct?

A. That is correct.

Q. And, if a licensee, with a license from your Board, should see fit to administer chiropractic treatment, he would be at liberty to do so?

A. If he had a certificate to practice medicine, yes.

Q. Thank you. Now, after a person has been granted a diploma and graduated from an approved medical school and licensed to practice, some of the M.D.'s go on to achieve what is referred to as certification in some specialty, am I correct there, Doctor?

[fol. 133] A. Yes.

Q. And this certification is achieved in various medical specialties, like gynecology and obstetrics and surgery by presenting certain qualifications to the Board of the American Medical Association, is that correct?

A. No.

Q. I am trying to learn what the procedure is. Can you tell me, Doctor?

A. No, I cannot tell you the procedure for certification to the specialty board.

Q. You mean that you are not familiar with it?

A. In a general way, yes, but specifically, no.

Q. Would you tell us in a general way. I am interested in information, that's all.

A. Just what section, what particular part are you interested in?

Q. Let's suppose that a person who was a licensed practitioner of medicine wanted to become certified in some specialty, any specialty, how would he go about this?

A. The various boards, I am sure, lay down the procedures and the qualifications which must be followed in order to get such certification. I am not familiar with those specifications, and specialties.

Q. Well, I think you have helped me, Doctor. I am merely looking for information. When you say various boards, [fol. 134] you mean boards on that specific field?

A. The boards that you have mentioned.

Q. And, I take it it is a Board of the American Medical Association?

A. No, I don't think they are Boards of the American Medical Association.

Q. Well, what Boards would they be?

A. The Boards that you have referred to.

Q. Well, I didn't refer to the Boards.

A. You brought up the subject.

Q. I am asking how a person becomes certified in a specialty.

A. I say I don't know.

Q. You say the various Boards pass upon their qualifications and lay down the rules. I would like to know what Boards you are talking about.

A. I don't know what Boards you are talking about. I don't know what Boards you want information on. You asked for information, you see.

Q. I am.

A. Well, about what particular Board?

Q. Well, any Board that would be authorized to certify an individual as a specialist in a particular field.

A. Well, Mr. Brown, I don't know the specifications required by those various Boards.

Q. I am not asking about the specifications, I am asking [fol. 135] you what kind of Board is this, who sets it up?

A. I don't know the mechanism under which it is set up.

Q. I see. Well, is it one central board for the whole country that passes upon, say a person who wanted to become a specialist in gynecology?

A. I don't know the details of the boards, the composition of the boards.

Q. Well, we will let it go, Doctor; thank you. Then, after a person has been licensed to practice, I believe we have agreed that he may perform such treatment and practice in anyway that he feels and that seems to him proper in connection with the needs of the patient without supervision by the Board, is that correct?

A. Well, not in anyway. He might want to do a criminal abortion.

Q. I certainly didn't mean an illegal manner.

A. You said anyway.

Q. But, he may practice his profession in such manner as seems fit and proper to him, within lawful limitations?

A. That's right. In other words, you want me to say that he can practice any sector of the healing art.

Q. Exactly.

A. Yes.

Q. When you use that phrase, any sector of the healing art, can you tell us what you mean by that kind of lan- [fol. 136] guage? What do you mean?

A. I mean if he had a certificate to practice medicine in the State of Louisiana, he could practice chiropractic which is a sector of the healing art.

Q. Yes, that is what I wanted to get at. Tell me one more thing and we will be through. I would like to know, since you are an M.D. and I believe well informed, can you tell me, please sir, what distinction you could make between the practice of homeopathy as set forth in the statute and allopathy?

A. Homeopathy is the art of curing—

Q. Tell us what you are reading.

A. Webster's New International Dictionary, Merriam-Webster Second Edition, Unabridged, 1957.

Q. Well, that is available to all of us.

A. Yes, sir.

Q. I was wondering if you could possibly throw more light than the ordinary dictionary.

A. Well, I think the dictionary's definition well explains it, very adequately.

Q. You would not have anything to add to that?

A. Well, let me give you these definitions. Allopathy: that system of medical practice which aims to combat disease by the use of remedies producing effects different from those produced by the special disease treated. That is [fol. 137] allopathy.

Homeopathy: the art of curing, founded on resemblances; the theory and its practice that disease is cured by remedies which produce on a healthy person effects similar to the symptoms of the complaint of the patient, the remedies being usually administered in minute doses. Like cures like. Now, I think you can understand the difference between allopathy and homeopathy from that. Of course, as far as homeopathy is concerned, Doctor—

Q. I am not a doctor, not even a philosophy doctor, just a plain, hardworking lawyer. I regret that I cannot accept the compliment.

A. I apologize to the legal profession. Homeopathy is exempted from the medical practice act and as such, as an officer of the statutory body, I have nothing whatever to do with homeopathy.

Q. I understand and while on the subject, you have nothing to do with osteopathy then because that is specially treated in the statute?

A. That's correct.

Q. Now, nor with optometry, that is specially treated?

A. Yes, sir.

Q. Nor with chiropody?

A. Yes, I do have something because the chiropodists saw fit to ask the Louisiana State Board of Medical Ex- [fol. 138] aminers to administer and limit their practice.

Q. Isn't it a fact that the statute itself places it under the control of the Medical Board with respect to chiropody?

A. In giving the examination—let me be sure I get the wording correct. In giving the examination, we can call upon the services of chiropodists.

Q. Can you tell us please, sir, the difference if any you know, between osteopathy and chiropractic?

A. Let me give you Palmer's distinction between the two.

Q. If you please, I am not interested in what he says, I am asking you.

A. Well, I think he puts it very well.

Q. All right, if you will.

A. "The rule of the artery is supreme. Disease is because of obstructed, impure blood. We will cure it by using bones as fulcrums and levers to stimulate and purify the stream of blood." That is A. T. Still's philosophy.

Q. A. T. Still?

A. Yes, and D. D. Palmer's philosophy is, "The rule of mental impulse, through nerves, is supreme. Disease is because of reduced quantity flow of mental impulse. It will be cured, if, as, and when interfering medium—vertebral subluxation—is corrected."

Q. Do you think those are sound statements? Is that correct, his definition?

[fol. 139] A. Yes, sir.

Q. Thank you, sir. In reading the statute I notice the compensation of the attorneys for the Board is to be provided for by the Board out of its own funds.

A. That is right.

Q. And that all the proceedings brought by the Board are to be paid for by the Board's own funds, is that correct, Doctor?

A. I will answer that by quoting 37:1268, "All expenses and compensation of members shall be paid out of the funds of this Board only and shall never be a charge to the State."

Q. Now, in connection with your attorneys' compensation, he is entitled to recover in action for injunction and that sort of thing against unlawful practitioners or unlicensed practitioners, the sum not to exceed $50.00 as attorney fees. You are familiar with that?

A. Yes, sir.

Q. Has the Board made appropriation of funds in addition to this for attorney fees?

A. The Board does not run on a system of appropriations.

Q. Well, has the Board allotted any fees for counsel other than the income—

A. We pay the legal bill as it is presented.

Q. As it is presented?

A. Yes, sir.

[fol. 140] Q. Doctor McMahon, could you please find in the records of the Board and furnish for the record in this case a verbatim copy of the Board's rule with regard to the kind of diploma it will accept in support of an application for license. I realize that you have given us your own statement of what it is, but it might be possibly better from the court's standpoint if they had the Board's actual words before it.

A. Well, I am not in charge of those records. I don't know what they can give to you. The records here, I am in Baton Rouge.

Q. Well, we have the Secretary of the Board here, is that correct?

Mr. Adams: That is correct.

Mr. Brown: He will be able to tell us more about it. I think that's all, Doctor, thank you very much.

Deposition of Dr. Edwin Hugh Lawson

Doctor Edwin Hugh Lawson, 930 Hibernia Bank Building, New Orleans, Louisiana, called; after first being duly sworn, testified as follows:

By Mr. Brown:

Q. Doctor, will you please tell us what your full name is?

A. Edwin Hugh Lawson.

[fol. 141] Q. And, you live in New Orleans, is that correct?

A. That is cofrect.

Q. Would you give us your office address please, sir?

A. The State Board office?

Q. I beg your pardon. You do have an office in the State Medical Board's quarters?

A. That's right.

Q. Where are they, please?

A. 930 Hibernia Bank Building.

Q. And, you are at present the Secretary of the Louisiana State Medical Board of Examiners?

A. That's correct.

Q. Are you also a practicing physician?

A. I am.

Q. And where is your office for that purpose?

A. 2700 Napoleon Avenue.

Q. Thank you, sir. Now, you have been present all through the examination of Doctor McMahon which is just now completed.

A. That is true.

Q. And you have heard what Doctor McMahon has answered?

A. That is true.

Q. Are any of those answers such that you would differ with?

A. Not to my recollection.

Q. Is there anything that occurs to you during his testi- [fol. 142] mony that you would amplify or add to, Doctor?

A. Well, it is rather hard to remember.

Q. I recognize that, but if nothing occurs to you, it is perfectly all right. If nothing occurred to you along that line it is all right.

A. Not at the present time.

Q. You are also a member of the Board, is that correct?

A. I am.

Q. Doctor McMahon is the President and you are the Secretary?

A. Secretary-Treasurer.

Q. Secretary-Treasurer?

A. Yes, sir.

Q. And how long have you been on the Board?

A. Since August, 1953.

Q. And have you been Secretary of the Board all that time?

A. I have.

Q. And, you acquired your membership on the Board in the same manner that Doctor McMahon reiterated with respect to his own seat?

A. That's true.

Q. Now, with regard to the actions of the Board in suing for injunctions against unlicensed practitioners, do you keep the records of those actions?

A. I have charge of the minutes of the Board.

Q. I don't suppose you would be able to tell us without [fol. 143] referring to those records, offhand, how many injunction suits the Board has authorized since you have been on the Board. Do you have records with you that you could consult, Doctor?

A. No, not in that respect.

Q. Are you able to give us any estimate, approximately?

A. I can't say the number of injunction suits that have been filed, no, sir.

Q. I don't suppose you would have the information either with regard to the number of criminal prosecutions?

A. No, sir.

Q. But, you know that suits in both cases have been initiated?

A. That is true. We have had other suits than that. We have had suits against illegal practitioners of medicine that would not happen to be chiropractors.

Q. I understand that, but particularly I am asking you only about actions against chiropractors.

A. Yes, sir.

Q. Therefore, both civil suits to enjoin them and criminal actions against them have been filed, that is against chiropractors?

A. That's true, but in our investigation, we don't know whether the man is a chiropractor or not.

Q. I understand that.

A. He is accused of the illegal practice of medicine.

[fol. 144] Q. Now, where did you acquire your medical education?

A. Tulane University.

Q. You didn't study chiropractic in the courses of your work there?

A. Not under the heading of chiropractic.

Q. Did you study it under any other heading?

A. I may have, I don't know.

Q. The reason you don't know is that you don't know what chiropractic is?

A. I don't know all of the manipulations and so forth and techniques of a chiropractor.

Q. Have you personally given any special study to chiropractic techniques?

A. I have not studied chiropractic, no, sir, not as chiropractic.

Q. You don't know, then anything about the results or techniques and effects?

A. The only thing I know is the principles as outlined by Doctor McMahon. I have read one or two of the books that he mentioned, but I have not read as much as he has.

Q. I think, Doctor McMahon told us that the Board itself, has made no official study or evaluation of chiropractic?

A. Not as a Board.

Q. Yes. Now, you did not happen to bring with you or have with you the rule which Doctor McMahon told us [fol. 145] about, with regard to acquiring a diploma from a medical school listed as Class A?

A. I have the same rule that he read.

Q. That is the exact wording of the rule?

A. I have the same, not the rule, no.

Q. Doctor McMahon said that was his statement.

A. I have the same statement.

Q. You are custodian of the Board's records?

A. That is true.

Q. I wonder if you could provide us with the exact wording of the Board's rule on that subject?

A. That would be rather difficult. The Board has been in existence since 1914, and I have not been there except since 1953, and the rule was in effect when I went on the Board.

Q. Have you ever seen this rule?

A. I have been notified of it.

Q. You have not seen it yourself?

A. I have not seen the rule.

Q. You have a statement of what the rule says?

A. I have the Louisiana Revised Statute which requires that a man be a graduate of a Class A medical school.

Q. Before he can take the examination?

A. Before he can be examined.

Q. Before he can be admitted to practice?

[fol. 146] A. Allowed a license except on reciprocity.

Q. That is correct, but if a person comes to you as an applicant for practice in the State of Louisiana without a license from any other state, you now require, as I understand Doctor McMahon, that he present a diploma from a school listed as Class A by the American Medical Association.

A. That is true.

Q. Now, you have just told me that you have before you a statement of what the Board's rule is.

A. I misunderstood you. The statement is read by Doctor McMahon regarding the rule. I do not have with me the rule.

Q. And you have not seen the rule?

A. No, sir.

Q. So, you don't know of your own knowledge, that that is the correct statement and the rule?

A. I simply am directed and carry out the actions of the Board.

Q. You are a member of the Board yourself?

A. That is true, but as I stated a while ago, that rule was passed long before I got to be a member, and I was instructed by the President that that was the rule.

Q. And you don't know where he got his information?

A. He has been on the Board longer than I have.

[fol. 147] Mr. Brown: Can we stipulate, Mr. Adams, that the rule, the exact wording of the rule, will be made a matter of record?

Mr. Adams: No, we cannot stipulate that. I am informed from time to time there have been a great number of resolutions involving different particular sets of circumstances and situations, and I don't know if we can find that rule within the time that we have to present our evidence. How can I make an offer to do something that I may not be able to comply with?

Mr. Brown: Then, we will have simply to issue process for it.

Q. Doctor Lawson, you have custody of the records of the Board?

A. I do.

Q. Do you think that you can find the rule with regard to the kind of diploma the Board requires of applicants for license in Louisiana?

A. I imagine I can if I have time enough to look for it. That means—you must understand I have a limited staff and I am limited in my time.

Q. Yes, sir.

A. And I can't promise because it may take months.

Q. Well, we will probably issue process for it. You [fol. 148] understand that simply is to require that they be produced and we will do the best we can in the meantime. Now, are you considered a specialist in any branch of medicine?

A. I am.

Q. In what branch?

A. Pathology.

Q. Are you able, Doctor, to help me with the question that I asked Doctor McMahon about how an M.D. is certified to be a specialist?

A. Well, I will state first that this is purely voluntary on the part of the physician.

Q. Yes, sir.

A. And there is no legal statute on it. The only board that I know of is the Board of Pathology and it was formed by all of the—rather, four or five societies of pathology which send two representatives to act as members of the Board to give the examination which is either passed or failed, and either passes or fails a man in that specialty and he, if he passes, is certified by that Board as being particularly qualified in pathology. That is all it amounts to.

Q. As I understand you, then, Doctor, the Board is a Board—a self-operating organization, that is—does it have a connection with the American Medical Association?

A. No, sir, not that I know of. The men are all licensed [fol. 149] physicians.

Q. I think that helps, Doctor. I want to thank you. I really wasn't clear, myself.

A. I understood that you wanted that for your personal information.

Q. Well, I have a point that springs from it. I did want it for my personal information, but in addition, Doctor, when the Board licenses a practitioner under your Medical Practice Act, any licensee can practice his pathology as he sees fit?

A. That is true.

Q. Whether or not he is certified?

A. That is true.

Q. And, a practitioner can hold himself out and practice as a surgeon?

A. He can practice surgery.

Q. Whether or not he is certified in surgery?

A. That is true.

Q. And he can practice gynecology?

A. That is true.

Q. Where or not he is certified in gynecology, correct?

A. That's right.

Q. In fact, he can practice any of the special fields of medical science.

A. That is true. He is licensed to practice medicine and [fol. 150] surgery.

Q. And, in any field that he sees fit?

A. That is true.

Q. Yes. He can also practice chiropractic, if he sees fit?

A. If he practices legal medicine, that is all that is necessary.

Q. You mean if he is admitted to practice?

A. Provided that he holds a license.

Q. Then, he can practice chiropractic?

A. He would not be practicing legal medicine if he didn't have a license.

Q. But as long as he has a license, he can practice chiropractic?

A. True.

Q. Do you know anything about chiropractors referring patients to M.D.'s?

A. No, sir.

Q. You never have heard of it?

A. No, sir.

Q. Do you know of anything about M.D.'s referring patients to chiropractors?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. Well now, what would you say, Doctor, if an individual [fol. 151] applied for a license and presented a diploma from the Palmer School of Chiropractic, would you examine him?

A. Examine him?

Q. Yes.

A. I would if he qualified under the Medical Practice Act.

Q. And, it is your interpretation of the Medical Practice Act, as I understand you Doctor, and as I understand Doctor McMahon, that a person must present a diploma from a school listed as a Class A medical school by the American Medical Association?

A. That is correct.

Q. Thank you, Doctor, I think that's all we have, but will you excuse me for a second?

A. Yes, sir.

Mr. Simon: Doctor Lawson, who did you succeed?

A. Doctor Roy B. Harrison.

Q. Did he die at the time you succeeded him, or did he just resign?

A. He resigned.

Q. Do you know how long Doctor Harrison had been Secretary of the Board?

A. Not to my knowledge. I will put it this way, I couldn't swear to it, but I was told he was on there for thirty-two years.

[fol. 152] Q. How long have you been a member of the Board?

A. Since August, 1953.

Q. You ascended immediately to the position of Secretary-Treasurer of the Board upon coming on the Board?

A. That's right.

Q. With reference to that rule, a statement of which has been given by Doctor McMahon, I understand that the statement which you have is the same as the one Doctor McMahon has already given to us?

A. That is my interpretation, I have the same.

Q. Do you, or rather, did you and Doctor McMahon get together to write out the statement?

A. No, sir.

Q. You have not consulted together on the subject?

A. No, sir, that is the first time I have seen it or heard it.

Q. Doctor McMahon gave you that statement?

A. No, he gave it on the witness stand, I heard it.

Q. Then, he handed it to you?

A. He laid it down on the table, here, yes.

Q. That was the first time you ever saw the statement?

A. That is true.

Q. And, were you called upon, since receipt of the notice of the taking of this deposition, by Doctor McMahon, to dig up for him or surrender to him the official rule from which he could make the statement that is presented here?

[fol. 153] A. No, sir.

Q. The books are in your possession?

A. The records and the minutes are in my possession.

Q. This rule in question has been in your possession since the time you have had the position of Secretary-Treasurer?

A. It should be.

Q. To your knowledge, you have not seen that rule in the last few days?

A. No, sir.

Mr. Simon: That's all.

Certificate of Notary Public (omitted in printing).

* * * * * * *

[fol. 155] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
Civil Action No. 9292

JERRY R. ENGLAND, et al., Plaintiffs,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Defendants.

Before: JONES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges.

OPINION—January 5, 1960

JONES, Circuit Judge.

The plaintiffs, forty in number, are graduates of schools teaching what is called by them the "Science of Chiropractic." They have brought this action against the Louisiana State Board of Medical Examiners seeking a declaration that the Louisiana Medical Practice Act, La. Stat. Ann. §§ 37:1261 et seq. is unconstitutional as applied to them, and praying for an injunction against the continued enforcement of the statute as to them. The plaintiffs asked that a three-judge court be convened for a determination of the [fol. 156] case pursuant to 28 U.S.C.A. §§ 2281, 2284. The defendants moved to dismiss. After a hearing before the Court with a single judge presiding, the Court, believing that Louisiana State Board of Medical Examiners v. Fife, 162 La. 681, 111 So. 58, 54 A.L.R. 594, aff. 274 U.S. 720, 47 S. Ct. 590, 71 L. Ed. 1324, was decisive of the constitutional issue, dismissed the cause for want of a federal question. The Court of Appeals, with Judge Wisdom dissenting, reversed and remanded. England v. Louisiana State Board of Medical Examiners, 5th Cir. 1958, 259 F. 2d 626,

1959, 263 F. 2d 661. In remanding the cause, it was said by the Court of Appeals that "the plaintiffs are entitled to prove that chiropractic is such a useful profession or calling that they cannot be constitutionally excluded from its practice in Louisiana in the manner and form claimed to be attempted by the State Legislature and by the State Board of Medical Examiners." 263 F. 2d 661, 665. The full opinion of the Court of Appeals relieves us of any more extended recital of the contentions made and the factual matters asserted.

Since the dismissal of the case by this Court and since it was before the Court of Appeals, the Supreme Court has clarified the principles of abstention and has perhaps extended them beyond the limits which some of us thought [fol. 157] prevailed. City of Meridian v. Southern Bell Telephone and Telegraph Company, 358 U. S. 639, 79 S. Ct. 455, 3 L. Ed. 562; Louisiana Power & Light Co. v. City of Thibodaux, 360 U. S. 25, 79 S. Ct. ——, 3 L. Ed. 2d 1058; Harrison v. N.A.A.C.P., 360 U. S. 167, 79 S. Ct. ——, 3 L. Ed. 2d 1152; County of Allegheny v. Mashuda, 360 U. S. 185, 79 S. Ct. ——, 3 L. Ed. 2d 1163; Martin v. Creasy, 360 U. S. 219, 79 S. Ct. ——, 3 L. Ed. 2d 1186. See Empire Pictures Distributing Company v. City of Fort Worth, 5th Cir. 1959, —— F. 2d ——. These decisions and the rules they set forth, require a consideration of the principles of abstention in the case before us.

In the Martin, supra, case the view, both majority and minority, of the Supreme Court on the requirements for application of the abstention doctrine were clearly stated. Mr. Justice Stewart, for the majority, said: "Reflected among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions." 360 U. S. 219, 224. Mr. Justice Brennan, speaking for the minority in a concurrence, quoted his dissent in the Thibodaux case in [fol. 158] laying down these more restrictive prerequisites for abstention: "A District Court's abstention from the exercise of its properly invoked jurisdiction is justified, in

my view, 'only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve one of two important countervailing interests; either the avoidance of a premature and perhaps unnecessary decision of a serious federal constitutional question, or the avoidance of the hazard of unsettling some delicate balance in the area of federal-state relationships.' ". Id. at 225.

Whichever of these views is followed, it seems that in this case there is ample justification for leaving the present question for decision by the state court. As the majority of the Court of Appeals stated: "It is of interest to note that the Supreme Court has never changed its policy of reviewing with reluctance and self-restraint state regulations in the medical field, even though other state economic regulations have met a fluctuating substantive due process stand." 263 F. 2d 661, 673.

In this situation, the words of the Supreme Court in Harrison v. N.A.A.C.P., supra, suggest a rule for our guidance: "This now well established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our fed- [fol. 159] eral system. To minimize the possibility of such interference a scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts, Matthews v. Rodgers, 284 U. S. 521, 525, as their 'contribution . . . in furthering the harmonious relation between state and federal authority . . . ' Railroad Comm'n v. Pullman Co., 312 U. S. 496, 501." 360 U. S. 167, 176.

It might be said that a problem is presented by a further reading of the passage cited from the opinion in Harrison: "In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them." Ibid. The requirement that the state law not be "settled" is laid down since otherwise "Remission to those

courts would involve substantial delay and expense, and the chance of a result different from that reached below, on the issue of applicability, would appear to be slight." Chicago v. Atchison, T.&S.F.Ry.Co., 357 U. S. 77, 84 (1958). See also Public Util. Comm'n v. United States, 355 U. S. 534 (1958).

It might be urged that the state law here in question has been interpreted and finally settled by the highest court [fol. 160] of the state in Louisiana State Board of Medical Examiners v. Fife, supra. The Court of Appeals has, however, cast doubt on the settling nature of Fife. As justification for not following the Supreme Court's per curiam affirmance of Fife, as the District Court had done, the majority of the Court of Appeals stated: "Further, it is not clear that in the case closest in point, Louisiana State Board of Medical Examiners v. Fife, supra, there was actually and fully litigated and tried the issue of whether practitioners of chiropractic were engaged in the practice of a useful profession or calling which they had a lawful right to pursue unimpeded by requirements having no relation to such calling or profession." 263 F. 2d 661, 664.

It can be said that the issue as stated by the Court of Appeals is, in a degree, one of fact. But primarily the question is one of law, and it is for a court to determine as such. It is not the type of fact question involved in Allegheny County v. Mashuda Co., supra, wherein abstention was held to be inappropriate. There the state law was settled that land could not be condemned for private use and the only question was whether the land in issue had in fact been condemned for private use.

In a determination of the issue presented there must be a reexamination of the questions raised, although imperfectly as the Court of Appeals would have it, in Fife. The rationale of abstention, as that doctrine has now been [fol. 161] declared, would most certainly appear to require that this reexamination be initially made by the state court rather than by a federal court. The state court might effectively end this controversy by a determination that chiropractors are not governed by the statute. Their inclusion is, after all, not express. Further, the thrust of the plaintiffs' argument is that chiropractic is unrelated to medicine

as medicine and this line of reasoning might lead to a limiting interpretation such as would render unnecessary a testing of the statute by the Constitution.

It would seem that if it is proper to permit a state to interpret and apply or limit one of its statutes before a federal court considers its constitutional validity, it would also be proper for the state to have the first opportunity to reinterpret and reapply and limit, if need be, a statute which the highest court of the State has previously held to be constitutional under the factual situation existing at the time of its decision.

It can be said that abstention by this Court will involve delay and additional expense for the parties. This may be admitted and the result is not changed. One who seeks to overturn precedents must be prepared for delay and expense. Where comity moves the federal courts to abstain, the cost in time and money is said to be justified by the resulting federal accommodation. Wright, The Abstention [fol. 163] Doctrine Reconsidered, 37 Texas L. Rev. 815, 818.

We ought not to believe that there is no expectation that the state court will change its interpretation and this Court should therefore act at once. The subject for judicial inquiry, as posed by the Court of Appeals, is whether chiropractic "is no more entitled to recognition today than it was thirty odd years ago." 259 F. 2d 626, 627. The answer of the state court cannot be presumed one way or the other. It is appropriate that this Court stay its hand until the state has had a chance to act.

An order will be entered staying further proceedings in this Court until the courts of the State of Louisiana shall have been afforded an opportunity to determine the issues here presented, and retaining jurisdiction to take such steps as may be necessary for the just disposition of the litigation should anything prevent a prompt state court determination.

[fol. 163] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 9292

JERRY R. ENGLAND, D. C., et al., Plaintiffs,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Defendants

---

ORDER RE ABSTENTION—January 5, 1960

Pursuant to the opinion this day rendered, It Is Ordered that further proceedings herein be, and the same are hereby, stayed until the courts of Louisiana shall have been afforded an opportunity to determine the issues here presented.

It Is Further Ordered that jurisdiction herein be, and the same is hereby, retained for the purpose of taking such action as may be necessary for the just disposition of the litigation, absent a prompt state court determination.

Enter, W. L. J., H. W. C., J. S. W.

[fol. 165] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
No. 1904—Civil Action

JERRY ENGLAND, et al.,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al.

MOTION TO VACATE ORDER OF ABSTENTION AND FOR A TEMPORARY RESTRAINING ORDER—Filed March 10, 1961

To the Honorables, Justices Jones, Christenberry, and Wright, sitting in this cause as the United States Three Judge Constitutional Court.

Come now, through counsel, Jerry R. England, James H. Bryant, Margaret L. Bryant, et al. * * * graduate Chiropractors domiciled in the State of Louisiana, who respectfully move the Court

(a) for an Order to vacate the Order of this Court issued on the 6th day of January, 1960, whereby this Court abstained from deciding the merits of this cause for the purpose of giving the State Courts of Louisiana [fol. 166] the first opportunity to "reinterpret and reapply and limit, if need be" the provisions of L. R. S. 37:1261, et seq., commonly known as the Medical Practice Act of Louisiana, the constitutionality of which is assailed in this pending cause;

* * * * * * *

1.

Notice of this Court's Order to Abstain was given to counsel for movers herein on the 29th day of January, 1960;

2.

Within four days thereafter, seeking diligently to have their rights adjudicated, and desiring with equal fervor to comply with the express wishes of this Court, movers filed in the Nineteenth Judicial District Court of the State of Louisiana their petition re-urging their position quoad the constitutionality of the Medical Practice Act as sought [fol. 167] to be applied to Chiropractors, and urging the thoughtful views of this Court,[1] in order thereby to give to the State Courts of Louisiana "the first opportunity to reinterpret and reapply and limit, if need be, a statute which the highest Court of the State has previously held to be constitutional under the factual situation existing at the time of its decision", as suggested by this Court in its reasons for the Order of Abstention.

3.

Movers appealed from an adverse decision[2] of the Nineteenth Judicial District Court to the Court of Appeal, First

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[1] This Court said: "The state court might effectively end this controversy by a determination that Chiropractors are not governed by the statute." In the original petition and brief to the state court (Appendix p. 3), it was alleged that the first Medical Practice Act of Louisiana was enacted at the second session of the second Legislature of Louisiana on January 3, 1816, at which time Chiropractic was not in existence, and it was repeatedly amended until 1918, twice since 1895 which marked the advent of the science of Chiropractic. Never during this period of time was ever Chiropractic expressly included in said Act. But in spite of this showing, the State courts totally ignored this allegation and the supporting evidence.

This Court further said: "Further, the thrust of the plaintiffs' argument is that Chiropractic is unrelated to *medicine as medicine* and this line of reasoning might lead to a limiting interpretation such as would render unnecessary testing of the statute by the Constitution." In the original petition to the State Court this fact was set out in detail, but again the courts of Louisiana totally ignored the contention and the evidence introduced in support of it.

[2] The decision of the State District Court was somewhat less than perfunctory. Even counsel for the defendants did not appear on the hearing date. In brief we pointed out to the state Court of Appeal that the District Court had ignored the admonition of this

Circuit of Louisiana. The Court of Appeal, however, disposed of this cause, not by an analysis of the evidence (from a reading of the opinion it appears movers' evidence was not considered), but by the simple procedure of interposing the prevailing Louisiana Jurisprudence, e.g., the Fowler, Cronk, Fife and Beatty cases (Appendix p. 14 et seq.) which the Federal Fifth Circuit Court and this Court have held did not control.

• • • • • • • •

[fol. 168] 5.

Application for Writs Certiorari, Mandamus and Prohibition was finally filed in duplicate in the State Supreme Court on Thursday afternoon, February 9, 1961, (Appendix p. 29) seeking a review of the decision of the State Court of Appeal and on Wednesday morning, February 15, 1961, the Supreme Court denied said application in these words, "Writ refused. The judgment of the Court of Appeal is correct", thus affirming the previous jurisprudence of Louisiana and in particular the Fife case as a bar to your movers' rights to exercise their constitutional right to engage in the practice of a useful profession in the State of Louisiana.

• • • • • • • •

7.

As a result of the final adjudication of this matter by the highest court of the State of Louisiana, the purpose for

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Court as contained in its reasons for abstaining, but observed: "This result obtains, we believe, not because the learned trial judge was derelict in his duty to accept the intriguing challenge offered by this case, but because of his appreciation of a higher duty to demean himself with deference to the superiority of this Court to act as a pace-maker in changing the rigidity of the jurisprudence of this State concerned with the controversy presented by this case. His abstention finds support in the orderly administration of justice. For this Court, however, to disclaim the challenge, by the simple procedure of interposing the prevailing Louisiana jurisprudence mentioned, would not only appear inordinately inappropriate, but might well betray an injudicious pride of opinion. Additionally, such a course of action assuredly would be less than what is expected by the Federal Court. • • •"

which this Court abstained has expired; the exigencies of this case are such that the abstention order should be vacated and an immediate but final decision should be rendered on movers' motion for a preliminary injunction and summary judgment.

* * * * * * * *

[fol. 169] Wherefore, movers pray that the motion herein contained be granted and accordingly that the order of this Honorable Court issued on January 6, 1960, whereby this Court abstained from deciding the merits of this cause be vacated and in due course a decision on the question of the preliminary injunction and the summary judgment motion of movers herein be rendered favorably to plaintiffs.

* * * * * * * *

[fol. 170] Simon & Trice, 301 East Congress, Lafayette, Louisiana, By J. Minos Simon;

Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana;

Russell Morton Brown, 605 Southern Building, Washington, D. C.

Duly sworn to by J. Minos Simon, jurat omitted in printing.

[fol. 171] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

[Title omitted]

MOTION TO DISMISS—Filed May 5, 1961

To the Honorable, The United States District Court for the Eastern District of Louisiana, New Orleans Division:

Defendants move this Honorable Court to dismiss this action at plaintiffs' costs for the reason that it does not state a claim upon which relief can be granted, and further on the ground that this Court no longer has jurisdiction in view of the fact that the Appellate Courts of Louisiana have made a final determination of the issues involved and plaintiffs have not prosecuted an appeal to the United States Supreme Court.

Defendants further pray for all such just and equitable relief as may be deemed fit and proper.

Adams and Reese, By: St. Clair Adams, Jr., Trial Attny., 847 National Bank of Commerce Building, New Orleans 12, Louisiana;

Ellis, Lancaster and King, By: Robert E. LeCorgne, Jr., 1320 National Bank of Commerce Building, New Orleans 12, Louisiana.

[fol. 173] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
No. 9292—Civil Action

JERRY R. ENGLAND, et al., Plaintiffs

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., Defendants

---

Simon & Trice, J. Minos Simon, Reed, Reed, Reed & Garvey, Floyd J. Reed, Russell Morton Brown, Attorneys for Plaintiffs;

Adams & Reese, St. Clair Adams, Jr., Ellis, Lancaster & King, Robert F. LeCorgne, Jr., Attorneys for Defendants.

OPINION—May 31, 1961

Before JONES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges.

PER CURIAM:

In this proceeding forty chiropractic examiners sought a declaration of their right to practice without complying with the requirements of the Louisiana Medical Practice Act, La. R.S. 37:1261, et seq. They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England* v. *Louisiana State Board of Medical Exam.*, 259 F.2d 626, rehearing denied, 263 F.2d 661, certiorari denied, 359 U.S. 1012, this court was convened. Applying principles recently reaffirmed by the Supreme Court in *Meridian* v. *Southern Bell*

T. & T. Co., 358 U.S. 639; *Louisiana P. & L. Co.* v. *Thibodaux City*, 360 U.S. 25; *Harrison* v. *N.A.A.C.P.*, 360 U.S. [fol. 174] 167; and *Martin* v. *Creasy*, 360 U.S. 219, we abstained and remitted the parties to the courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "to take such steps as may be necessary for the just disposition of the litigation should anything prevent a prompt state court determination." *England* v. *Louisiana State Board of Medical Examiners*, E.D. La., 180 F.Supp. 121.

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeal ultimately found against plaintiffs' contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of an opportunity to practice their healing art, did not violate any provision of the Federal Constitution. *England* v. *Louisiana State Board of Medical Exam.*, La. App., 126 So.2d 51. On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La.Sup.Ct. No. 45,509. No appeal was taken to the Supreme Court of the United States. Instead, plaintiffs now return to this court and ask us to proceed to adjudicate the constitutional issues. Defendants pray for dismissal of the cause.

In this posture, the case points up the dilemma of a litigant who has invoked the jurisdiction of a federal court to assert a claimed constitutional right and finds himself remitted to the state tribunals. On the one hand, in view of *Government Employees* v. *Windsor*, 353 U.S. 364, he dare not restrict his state court case to local law issues. On the other, if, as required by *Windsor*, he raises the federal questions there, well established principles will bar a relitigation of those issues in the United States District Court. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413. Since, in the usual case, no question not already passed on by the state courts will remain, he is thereby effectively deprived of a federal forum for the adjudication of his federal claims. Cf. *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 50.

It is true that in most such cases an appeal of right to the United States Supreme Court is given, 28 U.S.C. §1257(2), [fol. 175] but that is no more than the plaintiff would have had even if he had never invoked the jurisdiction of the United States District Court. Moreover, there are cases where discretionary certiorari is the only available remedy from an adverse state court decision. 28 U.S.C. §1257(3).

All this seems contrary to the principle underlying the doctrine of abstention, which has been said not to "involve the abdication of federal jurisdiction, but only the postponement of its exercise." *Harrison* v. *N.A.A.C.P.*, supra, 177. Nor does this procedure accord with the historic function of abstention to assure "that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law." *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105. Yet we can see no way out of the dilemma if the state courts must consider the constitutional issues together with local law questions.

Thus, here, since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this court, having no power to review those proceedings, must dismiss the complaint. The proper remedy was by appeal to the Supreme Court of the United States.

Defendants' motion to dismiss granted.

Warren L. Jones, United States Circuit Judge; Herbert W. Christenberry, United States District Judge; J. Skelly Wright, United States District Judge.

New Orleans, Louisiana, May 31, 1961.

[fol. 176] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 30, 1961

I. Notice Is Hereby Given that Jerry R. England, James [fol. 177] H. Bryant, et al. * * * plaintiffs in the captioned matter, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on May 31, 1961.

This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Original complaint and attached exhibits, together with defendants' answer.
2. Defendants' original Motion to Dismiss.
3. Judge J. Skelly Wright's ruling on Motion to Dismiss.
4. Plaintiffs' appeal notice to Court of Appeals, Fifth Circuit.
5. Order of Court of Appeal, Fifth Circuit reversing Judge Wright's dismissal order and remanding case for trial before federal three-judge district court, together with order composing said court, and both opinions of said Court.
6. Plaintiffs' Motion for Summary Judgment.
7. Three-Judge District Court's reasons for an order of abstention.

[fol. 178] 8. Plaintiffs' Motion to Vacate Abstention Order and for Temporary Restraining Order.

9. Defendants' second Motion to Dismiss.

10. Extract of the minutes of May 29, 1961, of the Three-Judge District Court or transcribed colloquy between the judges of said court and counsel, showing assurance given to the said court by defendants not to prosecute plaintiffs under the state statute complained of during pendency of the captioned matter.

11. Opinion and order of the three-judge District Court, granting defendants' Motion to Dismiss plaintiffs' complaint.

III. The following questions are presented by this appeal.

Question One

Does the doctrine of abstention, in the manner invoked and applied by the three-judge district court, involve the abdication of federal jurisdiction imposed by Congress and invoked by plaintiffs under 28 U.S.C.A. 1331, 42 U.S.C.A. 1981 and 1983, 28 U.S.C.A. 1343(3), 28 U.S.C.A. 2281 and 2284 and 28 U.S.C.A. 2201 and 2202?

Question Two

If the answer to the preceding question should be in the affirmative, then:

Does not such a doctrine, abrogating as it does the specific areas of federal jurisdiction mentioned, involve an infringement on the legislative branch of government by the judiciary contrary to federal constitutional separation of governmental powers?

Question Three

If the answer to question one should be in the affirmative, then:

Does not such a doctrine operate to deny plaintiffs of constitutional due process?

Question Four

Is the decision of a state court, to which a three-judge federal court remitted the case under the doctrine of abstention, binding on the said federal court, where the state court [fol. 179] upholds the constitutionality of state statute, tested under the federal constitution?

a. Can a state court thus successfully interpose state sovereignty, where the federal constitutional rights of its citizens are claimed to be violated by a state statute?

Simon & Trice, 301 E. Congress, Lafayette, Louisiana, By: J. Minos Simon.

Russell Morton Brown, Suite 500, 815 Fifteenth Street, N. W., Washington 5, D. C.; Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana, Of Counsel.

[fol. 180] Proof of Service (omitted in printing).

[fol. 181] [File endorsement omitted]

In United States District Court
For the Eastern District of Louisiana
New Orleans Division

[Title omitted]

Amendment to Designation of Record—Filed July 31, 1961

1. The Clerk will please additionally prepare:

1. A transcript of all docket entries in this cause.

Simon & Trice, 301 E. Congress, Lafayette, Louisiana, By: J. Minos Simon.

Russell Morton Brown, Suite 500, 815 Fifteenth Street, N. W., Washington 5, D. C.; Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana, Of Counsel.

[fol. 182] Proof of Service (omitted in printing).

[fol. 183]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

DOCKET ENTRIES

JERRY R. ENGLAND, D.C., THOMAS W. MILLER, D.C., WILLIAM S. BOYD, D.C., MELVIN D. EASTMAN, D.C., ROBERT HENRY WILKINSON, D.C., All residents of the Parish of Calcasiue, Louisiana;

PAUL SHURTLEFF, D.C., JAMES E. COLLINS, D.C., EDWIN JEROME DIXEMAN, D.C., PAUL J. ADAMS, D.C., All residents of the Parish of Lafayette, Louisiana;

GEORGE DANDO, D.C., M. R. METZEL, D.C., DANIEL J. ARTON, D.C., All residents of the Parish of Iberia, Louisiana;

FLOYD WESLEY SAFFORD, D.C., WILLIE SACKS, D.C., STANFORD G. BEATTY, D.C., Ph.C., STANFORD G. BEATTY, JR., D.C., All residents of the Parish of Orleans, Louisiana;

DONALD E. RINGQUIST, D.C., A resident of the Parish of Vermilion, Louisiana;

HUBERT G. ARNOLD, D.C., A resident of the Parish of St. Mary, Louisiana;

ARCHIE V. BROWNING, JR., D.C., JOHN W. BOOTH, D.C., All residents of the Parish of East Baton Rouge, Louisiana;

O. S. HOLLIDAY, D.C., Ph.C., JAMES C. STEPHENSON, D,C., All residents of the Parish of Beauregard, Louisiana;

JOHN E. FLYNN, D.C., R. F. WELLER, D.C., All residents of the Parish of Terrebonne, Louisiana;

R. L. BRYON, D.C., CORWIN HENNEMAN, D.C., GERRY E. HINTON, D.C., All residents of the Parish of St. Tammany, Louisiana;

B. D. Mooring, Jr., D.C., Glen Gilchrist, D.C., Keith E. Shaw, D.C., E. J. Nosser, D.C., All residents of the Parish of Caddo, Louisiana;

Julian Edward Banker, D.C., A resident of the Parish of Jefferson Davis, Louisiana;

A. P. Sipes, D.C., Harold B. Karas, D.C., All residents of the Parish of Webster, Louisiana;

H. C. Sloat, D.C., A resident of the Parish of Morehouse, Louisiana;

Roger C. Farmer, D.C., A resident of the Parish of Acadia, Louisiana;

D. N. Gunn, D.C., A resident of the Parish of St. Charles, Louisiana;

Eric L. Lensgraf, D.C., Daniel L. Bryant, D.C., All residents of the Parish of Tangipahoa, Louisiana;

vs.

Louisiana State Board of Medical Examiners, and Rhett McMahon, President, Louisiana State Board of Medical Examiners, and Edwin Lawson, Secretary, Louisiana State Board of Medical Examiners.

[fol. 184]

Civ. 1904

Basis of Action: Comptl. for injunctive relief

Attorneys

For Plaintiff:

J. Minos Simon, 115 East Vermillion St., Lafayette, La., also for intervenors;

Floyd J. Reed, Maison Blanche, Jack L. Simms, Merchants & Farmers Bk. Bldg., Leesville, La.

For Defendant:

Adams & Reese, N.B.C. Bldg.;

Phelps, Dunbar, Marks, Claverie & Sims, 420 Hibernia Bldg., for La. State Medical Society, intervenors.

Date	*Account*	*Received*	*Disbursed*
5/23/57	J Minos Simon	15.00	
5/24/57	Treas. U. S.		15.00
7/15/57	J M Simon	5.00	
7/16/57	Treas. U. S.		5.00

Date 1957	*Filings—Proceedings*	*Attorneys* PLTF.	DEFT.
May 23	Flg. complt. & ord. to show cause, etc.; with exhibits annexed Issg. 3 summons and M.Rs.	1	
27	Flg. mtn. of defts. to dismiss	2	
28	Flg. M.R. on summons (Served deft. thru Dr. E.H. Lawson on 5/24/57)	3	
27	Entg. hearing on application for prel. inj. & on mtn. of defts. to dismiss ord. denying mtn. for temp. rest. ord. & matter submitted as to mtn. to dismiss; counsel for pltf. given 10 days to file memo—Entd. 5/31/57	4	
June 4	Flg. M.R. on summons (Served Rhett McMahon on 5/24/57)	5	
(3)	Flg Motion of Pltf for Restraining Order	5½	
14	Entg. order granting defts'. mtn. to dismiss, treated as a mtn. for summary judgm; reasons listed—Entd. 6/20/57—Issg. notice	6	
20	Entg. judgm. in favor of defts; dismissing pltf's. suit with costs Entd. 6/21/57—Issg. notice	7	

CLOSED

Date 1957		Attorneys PLTF.	DEFT.
July 15	Flg. notice of appeal by pltfs. Issg. copies above to Messrs. Adams & Reese		8
	Flg. appeal bond		9
Aug 21	Flg. M & O Extending time 50 days from 8/24 to file record on appeal Entd 8/27—Issg. Notice		10
[fol. 185]			
Sept. 11	Flg. & Entg. order to send orig. exs. to Ct. of Appeals. Entd. 9/23/57. Issg. notice		11
11	Flg. Desig. of record on appeal, etc.		12
Oct 11	Flg. Reporters Transcript		11
1959			
June 18	Flg. Mandate of the Court, Judgment reversed, remanded to said District Court for further proceedings, etc. (June 1959, JSS)		13
7/14/59	Flg. motion of pltf. for temporary restraining order.		14
7/16/59	Flg. answer of defts.		15
7/20/59	Flg. motion of defts. to dismiss for failure to state a claim upon which relief can be granted, or in lieu have action transferred to New Orleans division, with notice of hearing on July 29, 1959, and memo in support annexed		16
7/29/59	Entg. order that hearing on motion of defts. to dismiss or in lieu thereof to have action transferred to the New Orleans Division, be hereby continued 1 week. Ent. 8/3/59. Issg. Notice.		17

Date		Attorneys PLTF.	DEFT.
8/ 3/59	Flg. motion of various residents of La. for leave to intervene as pltfs. with affidavits, notice of hearing on Aug. 5, 1959, and memo in support annexed.	18	
8/ 4/59	Flg. notice of fixing hearing on motion to intervene on behalf of Agnes G. Boudreaux, et als, on Aug. 5, 1959.	19	
8/ 4/59	Flg. opposition by defts. to petition of intervention filed by 3,687 patients.	20	
8/ 4/59	Flg. opposition by defts. to petition of a great number of chiropractors to intervene	21	
8/ 4/59	Flg. opposition by defts. to motion for a temporary restraining order.	22	
8/ 5/59	Flg. answer of La. State Medical Society, Intervenor to pltf.'s complaint.	23	
8/ 5/59	Flg. motion of La. State Medical Society to intervene, with notice of hearing on Aug. 12, 1959; and memo in support annexed.	24	
8/ 5/59	Entg. hearing on 1. motion of defts. to dismiss or in lieu to have action transferred to New Orleans division of Court, and order GRANTING motion of defts. to transfer to New Orleans, and DENYING motion of defts. to dismiss. 2. Petition of Chiropractors to intervene as pltfs., and order GRANTING same. 3. petition of patients to intervene as pltfs. and order DENYING same, patients thru their counsel may file briefs, etc. 4. application for temporary injunction and order DENYING same. Ent. 6/11/59. Issg. Notice.		

(Closed Case)

Transferred to New Orleans Division. C. A. 9292

[File endorsement omitted]

[fol. 186]

In the United States District Court

For the Eastern District of Louisiana

New Orleans Division

Docket Entries

(Three Judge Court)

TRANSFERRED TO
NEW ORLEANS DIVISION
FROM
BATON ROUGE DIVISION
NO. C. A. 1904

(Judge Wright's order 8/5/59)

Jury demand date:

Civil Docket

United States District Court

Title of Case

Jerry R. England, D.C., Thomas W. Miller, D.C., William S. Boyd, D.C., Melvin D. Eastman, D.C., Robert Henry Wilkinson, D.C., Paul Shurtleff, D.C., James E. Collins, D.C., Erwin Jerome Dixeman, D.C., Paul J. Adams, D.C., George Dando, D.C., M. R. Metzel, D.C., Daniel J. Arton, D.C., Floyd Wesley Safford, D.C., Willie Sacks, D.C., Stanford G. Beatty, D.C., Stanford G. Beatty, Jr., D.C., Donald E. Ringquist, D.C., Hubert G. Arnold, D.C., Archie V. Browning, Jr., D.C., John W. Booth, D.C., O. S. Holliday, D.C., James C. Stephenson, D.C., John E. Flynn, D.C., R. F. Weller, D.C., R. L. Byron, D.C., Corwin Henneman, D.C., Gerry E. Hinton, D.C., B. D. Mooring, Jr., D.C., Glen Gil-

CHRIST, D.C., KEITH E. SHAW, D.C., E. J. NOSSER, D.C., JULIAN EDWARD BANKER, D.C., A. P. SIPES, D.C., HAROLD B. KARAS, D.C., H. C. SLOAT, D.C., ROGER C. FARMER, D.C., D. N. GUNN, D.C., ERIC L. LENSGRAF, D.C., DANIEL L. BRYANT, D.C.

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, and RHETT McMAHON, President, Louisiana State Board of Medical Examiners, and EDWIN LAWSON, Secretary, Louisiana State Board of Medical Examiners.

Attorneys:

For plaintiff:

J. Minos Simon, 115 East Vermillion Street, Lafayette, La.

Floyd J. Reed, of Reed, Reed, Reed & Garvey, Maison Blanche Bldg., New Orleans, La.

Jack L. Simms, Merchants & Farmers Bank Bldg., Leesville, La.

Phelps, Dunbar, Marks, Claverie & Sims, 420 Hibernia Bank Bldg., for La. Medical Society—Intervenors)

For defendant:

St. Clair Adams, Jr., Adams & Reese, N. B. C. Bldg.

and

Robert F. Le Corgne, Jr., Ellis, Lancaster & King, 1320 N. B. C. Bldg.

Date	*Name or Receipt No.*	*Rec.*	*Disb.*
5/23/57	J.M.Simon	15.00	
7/16/57	J.M.Simon	5.00	(appeal)
6/30/1961	Simon & Trice	5.00	(appeal)
7/ 6/61	CD #1		5.00

[fol. 187]

Date	Proceedings	Date Order or Judgment Noted
8/ 5/59	Entg. hearing on 1. motion of defts. to dismiss or in lieu to have action transferred to New Orleans Division of Court and order GRANTING motion of defts. to transfer to N.O., and DENYING motion of defts. to dismiss. 2. Petition of Chiropractors to intervene as pltfs., and order GRANTING same. 3. Petition of patients to intervene as pltfs., and order DENYING same., patients thru their counsels may file briefs, etc. 4. Application for temporary injunction and order DENYING same. Ent. 8/11/59. Isg. notice	25
8/11/59	Entg. order appointing Three Judge Court. Ent. 8/13/59. Issg. Notice.	26
8/12/59	Entg. order that hearing on motion of La. State Medical Society to intervene be continued one week. Ent. 8/14/59. Issg. Notice.	27
8/19/59	Entg. hearing on motion of La. State Medical Society to intervene as Party Deft. Argument and Submission. Ent. 8/20/59.	28
8/27/59	Flg. motion of defts. and order that Ellis, Lancaster & Kind and Robert E. LeCorgne, Jr. became associated as counsel of record for defts., La. State Board of Medical examiners in this cause. Ent. 8/28/59. Issg. Notice.	29

Date	Proceedings	Date Order or Judgment Noted
9/ 2/59	Flg. notice of taking depositions of Dr. Rhett McMahon and Dr. Edwin Lawson by pltfs. on Sept. 15, 1959.	30
9/ 2/59	Flg. requests for deposition subpoenas by pltf. Issg. same.	31
9/ 3/59	Flg. motion of defts. for order that deposition of Dr. Rhett McMahon and Dr. Edwin H. Lawson not be taken, or in alternative to limit scope of examination and to change the date and time thereof, with notice of hearing on Sept. 9, 1959, with memo in support annexed.	32
9- 9-59	Flg. M.R. on subpoena	33
9- 9-59	Entg. hearing on motion that deposition be not taken, etc., argument, & order vacating taking of deposition, etc.—Entd. 9-10-59—Issg. notice	34
9-10-59	Flg. M.R. on subpoena	35
9-10-59	Entg. order fixing hearing on application for tem. inj. on 11-13-59, etc. —Issg. notice—Entd. 9-14-59	36
(8-19-59)	Entg. order granting motion of La. State Med. Soc. to intervene—Entd. 9-15-59. Issg. notice	37
9-15-59	Flg. transcript of reporter on motion cont. taking of deposition, etc.	38
9-21-59	Flg. notice of taking deposition of Drs. McMahon & Lawson	39
	Flg. request for subpoenas—Issg. same	40

Date	Proceedings	Date Order or Judgment Noted
9-21-59	Flg. M&O giving permission to file affidavits—Entd. 9-21-59—Issg. notice	41
	Flg. affidavit of James E. Collins	42
	Flg. affidavit of Norbert C. Barbee	43
	Flg. affidavit of Harry W. Burge	44
9-24-59	Fg. notice of plaintiff to take deposition of Dean U. Harrell –	45
	Flg. request for subpoena—Issg. same	46
10/ 1/59	Flg. M. R. on deposition subpoena. (unexecuted as to Dr. E. S. Lawson)	47
10/ 7/59	Flg. M. R. on deposition subpoena (1 executed)	48
10/20/59	Flg. motion of pltfs. for summary judgment, with notice of hearing on Nov. 13, 1959, (Box of exhibits on file with this motion)	49
10/20/59	Flg. affidavit and attached exhibits of Dr. Edwin Hugh Lawson	50
10/20/59	Flg. statutes of certain states relative to licensing of practitioners by deft. (exhibits in large brown folder annexed)	51
10/20/59	Flg. affidavit of Dr. Clarence E. Boyd, with copy of article annexed.	52
10/30/59	Flg. affidavits of Dr. Edgar Hull, and Dr. Maxwell E. Lapham, with exhibits annexed by La. State Medical Society, intervenors	53
10/30/59	Flg. motion of La. State Board of Medical Examiners to file depositions	54
10/30/59	Flg. depositions of Drs. Rhett McMahon and Edwin H. Lawson	X

Date	Proceedings	Date Order or Judgment Noted
10/31/59	Flg. affidavit of L. M. Rogers, D. C. by pltf.	55
10/31/59	Flg. affidavit of James M. McInerney by pltf.	56
10/31/59	Flg. affidavit of C. H. Gillenwater, D. C. by pltf.	57
10/31/59	Flg. affidavit of L. M. Rogers by pltf.	58
11/13/59	Flg. motion of plaintiff for an order of Court permitting intervention of 3687 chiropractic patients	59

[fol. 188]

JERRY R. ENGLAND, et al.

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al.

Civil Docket

Date	Filings—Proceedings	Amount Reported in Emolument Returns
11/13/59	Flg. motion of PLTFS. to reconsider order permitting the La. State Medical Society to intervene and upon reconsideration that it be recalled, annulled, etc.	60
11/13/59	Entg. hearing on 1. motion to reconsider permitting La. State Medical Society to intervene. 2) motion to reconsider application of chiropractic	

Date	Filings—Proceedings	Amount Reported in Emolument Returns
	patients to intervene as parties pltf. 3. Application of defts. for temporary injunction. 4. motion of pltfs. for summary judgment. Argument and Submission. Ent. 11/16/59	63
1/ 5/60	Flg. opinion of Three Judge Court. Ent. 1/6/60	62
1/ 5/60	Entg. order pursuant to opinion of three judge court, that further proceedings be stayed until Courts of La. have been afforded an opportunity to determine the issues here presented, etc. Ent. 1/6/60. Issg. Notice.	64
2/ 2/60	Flg. motion and order allowing Atty. Floyd J. Reed to withdraw designated affidavits and exhibits from record upon his giving Clerk proper receipt. Ent. 2/3/60. Issg. Notice.	64
2/12/60	Flg. receipt of pltf.'s attorney for certain exhibits.	65
2/23/60	Flg. motion and order allowing attys for deft. to withdraw form the record all affidavits; documents, texts, references, etc., with receipt annexed. Ent. 2/26/60. Issg. Notice.	66
2/29/60	Flg. motion of La. State Medical Society and order allowing their atty. to withdraw certain exhibits heretofore filed in record, etc. Ent. 3/2/60 Issg. Notice. Order receipted by Mr. West.	67

Date	Filings—Proceedings	Amount Reported in Emolument Returns
3/10/61	Flg. motion of pltfs. to vacate abstention order and for a temporary restraining order, restraining defts. from denying or depriving pltfs. of their rights and privileges, etc., notice of motion, appendix, etc. annexed.	68
5/ 5/61	Flg. motion of defts. to dismiss for lack of jurisdiction, notice of hearing on May 17, 1961, memo in support annexed.	69
5/18/61	Order that hearing on pltfs.' motion to vacate abstention order and for temporary restraining order, and on defts.' motion to dismiss this action at pltfs.' cost, be set for hearing at 3:00 P. M. May 29, 1961. Ent. 5/18/61. Issg. Notice.	70
5/17/61	Hearing on motion of defts. to dismiss this action at pltfs.' costs, and order that same be DENIED, and matter deferred until 3 judge court is appointed. Ent. 5/22/61. Issg. Notice.	71
5/25/61	Flg. supplemental motion of pltfs. for vacation of abstention order and for a temporary restraining order to issue as originally prayed for., with copy of appeal from 16th Judicial District Court, Parish of Iberia.	72
5/31/61	Flg. opinion of three judge court, defts.' motion to dismiss, GRANTED. Ent. 6/1/61. CLOSED CASE	73

Date	Filings—Proceedings	Amount Reported in Emolument Returns
5/29/61	Hearing on motion of pltfs. to vacate abstention order and for a temporary restraining order and on motion of defts. to dismiss this action at pltfs.' costs. Ent. 6/2/61. Argument. Submission.	72-A
6/30/61	Flg. notice of appeal by pltfs. to the Supreme Court of U. S.	74
7/13/61	Flg. motion and order granting defts., La. State Board of Medical Examiners, et al. and intervenors, La. State Board Medical Society an additional fifteen days from this date within which to designate record on appeal, J.S.W. Ent. 7/14/61. Issg. Notice.	75
7/31/61	Flg. amendment to designation of contents of record on appeal.	76
8/18/61	Flg. motion of pltfs.-appellants and order dated 8/21/61 that entire original record in this cause, save and except the exhibits and affidavits which were annexed to pltfs.' motion for summary judgment, be sent up to Clerk of Supreme Court of U. S. in [fol. 189] their original form. Ent. 8/22/61. Issg. Notice.	77
8/25/61	Flg. Motion of Pltfs. and Order that the time for lodging the record of this cause in the Supreme Court of the United States, is extended until Sept. 28, 1961. Ent. 8/25/61. Issg. Notice.	78
9-11-61	Flg. Reporter's Transcript of hearing on May 29th, 1961 in above case.	79

Date	Filings—Proceedings	Amount Reported in Emolument Returns
9/20/61	Flg. mtn. of Melvin D. Eastman, thru counsel, of Simon & Trice, Attorneys at Law, and ORDER (J.S.W.) authorizing withdrawal as party plaintiff. Ent'd. 9/22/61. Issg. Notice.	80
10/10/61	Flg. motion and order dated 10/11/61 permitting Norbert C. Barbee to withdraw as party pltf. Ent. 10/11/61. Issg. Notice. MULTIPLE PARTY DISMISSAL	81
2/21/63	Flg. notification that case has been submitted and considered by the Supreme Court and is placed on summary calendar.	82

[File endorsement omitted]

[fol. 190]

SUPREME COURT OF THE UNITED STATES

No. 32—October Term, 1962

JERRY R. ENGLAND, et al., Appellants,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al.

ORDER NOTING PROBABLE JURISDICTION—February 18, 1963

Appeal from the United States District Court for the Eastern District of Louisiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

Office-Supreme Court, U.S.
FILED
SEP 19 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 7

ENGLAND, ET AL., *Appellants*

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., *Appellees*

Appeal from the Three-Judge United States District Court, Eastern District of Louisiana

STATEMENT AS TO JURISDICTION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

ENGLAND, ET AL., *Appellants*

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., *Appellees*

Appeal from the Three-Judge United States District Court. Eastern District of Louisiana

---

STATEMENT AS TO JURISDICTION

The appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this statement of the basis upon which the Supreme Court of the United States has jurisdiction on direct appeal to review the judgment of the three-judge United States District Court, Eastern District of Louisiana, in dismissing

appellants' complaint, and should exercise such jurisdiction in this case.

Opinion Below

The reasons and judgment of said District Court were entered on May 31, 1961. A copy of the opinion is attached hereto as Appendix A, *infra*, p. 1a. It has not been reported. No separate findings of fact and conclusions of law were made.

Jurisdiction

The appeal herein is from a final judgment entered by the said District Court, dismissing the appellants' complaint which prayed injunction against execution of Louisiana Revised Statutes, Title 37, Sections 1261-90 (herein called Medical Practice Act), and administrative regulations issued thereunder by the Louisiana State Board of Medical Examiners. The complaint alleged that the statute and regulations deny their privileges and immunities as citizens of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The complaint further alleged violation of the federal Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C. 1981 and 1983, and asked for declaratory relief (28 U.S.C. 2201, 2202).

The action was dismissed by final order dated May 31, 1961. Notice of appeal was filed June 30, 1961.

This Court has jurisdiction on direct appeal to review said judgment below under 28 U.S.C. 1253 and 2101(b), and the following decisions sustain that jurisdiction:

Government and Civic Employees Organizing Committee, CIO, v. *Windsor,* 353 U.S. 364 (1957)

Clark v. *Poor,* 274 U.S. 554 (1927)

Harrison v. *N.A.A.C.P.,* 360 U.S. 167 (1959)

Rorick v. *Everglades Drainage Dist.,* 307 U.S. 208 (1939)

Statute Involved

There is no statute in issue.

Question Presented

Where a federal district court, considering a state statute alleged to be invalid under the United States Constitution, applies the doctrine of abstention, remitting plaintiffs to the state court and retaining jurisdiction, does the state court decision rendered bar further consideration of the issues by the federal district court?

Statement of the Case

Plaintiffs, appellants herein, a number of chiropractors, brought this action in the United States District Court for the Eastern District of Louisiana, claiming that:

(a) The Medical Practice Act deprives complainants of their civil rights and privileges and immunities, without due process of law under the Constitution and laws of the United States because it imposes requirements for license to practice which

have no reasonable relation to the practice of chiropractic, e.g., Section 1271 provides applicants must pass an examination in surgery, materia medica, obstetrics and gynecology, which chiropractors never use in their profession.

(b) The Louisiana State Board of Medical Examiners administers the act with the deliberate intention of unlawfully depriving appellants of their rights, privileges and immunities under the Constitution and laws of the United States. For example, the Medical Practice Act, i.e., Sec. 1271, requires only that applicant possess "a diploma from a college in good standing of any sect teaching medicine or the healing art." However, the Board requires a diploma from a medical school approved by the American Medical Association.

On the basis of the foregoing complaint, appellants sought the convening of a three-judge court, praying injunctive relief under 28 U.S.C. 2281 (and 2284) invoking the federal Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C. 1981 (and 1983), and praying a declaratory judgment under 28 U.S.C. 2201 and 2202.

The District Court dismissed the action on motion of defendants, holding "Since no serious (sic) federal question, not heretofore decided by the Supreme Court of the United States is presented, in the absence of diversity of citizenship, this court is without jurisdiction."

On appeal, the Fifth Circuit reversed and remanded the cause September 9, 1958, for further proceedings. January 23, 1959, the Fifth Circuit denied a rehearing, holding the complaint set forth grounds for relief. *England* v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958), *reh. den.*

263 F. 2d 661 (5th Cir. 1959), *cert. den.*, 359 U.S. 1012. (1959).

A three-judge federal District Court convened and heard argument on plaintiffs' motion for summary judgment, supported by voluminous uncontroverted affidavits, exhibits and appropriate supporting data. On January 29, 1960, that Court applied the doctrine of abstention, remitting plaintiffs to action in the State courts to secure a current decision on constitutionality of the statute in question, and its administration, meanwhile retaining jurisdiction of the cause. *England* v. *La. State Board of M. E.*, 180 F. Supp. 121 (E.D., La. 1960)

Plaintiffs immediately sued in the state courts for injunction against enforcement of the Medical Practice Act on the same grounds averred in the federal action. Adverse decision in the trial court was affirmed on appeal (*England* v. *Louisiana State Board of Medical Examiners*, —— La. ——, 126 So. 2d 51, *reh. den.* Jan. 30, 1961) and the Supreme Court of Louisiana declined to review, stating "The judgment of the Court of Appeals is correct." *Cert. den.* La. Sup. Ct. —— La. ——, —— So. 2d ——.

(These opinions have not yet been reported. La. Supreme Court, Docket No. 45,509, Feb. 15, 1961.)

Appellants then moved the three-judge federal District Court to vacate its order of abstention and proceed with the cause. Defendants moved to dismiss the action, which motion was granted by the District Court on May 31, 1961, holding, "since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this court, having no power to review those proceedings, must dismiss the complaint. The proper

remedy was by appeal to the Supreme Court of the United States." *England* v. *Louisiana State Board of Medical Examiners,* Civil Action No. 9292, E.D. La., May 31, 1961, opinion printed in Appendix A, *infra,* p. 1a. Not yet reported.

This is the decision from which this appeal is taken.

The Question Presented Is Substantial

The crucial question presented is one of federal procedure: whether a federal district court, having remitted the parties to state tribunals to secure a current interpretation of a state statute challenged as violating the United States Constitution, is thereafter precluded from exercising its retained jurisdiction to adjudicate the federal questions in the case because the highest state court has passed on the issues raised.

Appellants brought the state court action in compliance with the District Court stay order, reasonably believing that the federal questions would thereafter be fully considered under the retained jurisdiction in the District Court.

If indeed the question is to be answered in the affirmative, then plaintiffs are denied access to the federal forum provided by the federal statute. This Court has indicated the desirability of remission and the policy involved. *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167 (1959). In no case has it indicated an intent to diminish the statutory remedy, or limit the ambit of decision. In fact, this Court has expressly rejected any suggestion that remission constitutes abdication of jurisdiction by the federal courts, or "abnegation of judicial duty". *Louisiana Power & Light Co.* v. *Thibodeaux*, 360 U.S. 25, 29 (1959). In this *Thibodeaux* case it was plainly said for the Court

by Mr. Justice Frankfurter that the federal court decision was only postponed, and the questions would be eventually decided by the District Court.

To the same effect are *Railroad Com.* v. *Pullman Co.*, 312 U.S. 496 (1941); *Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959); *Government & Civic Employees, O. C., C.I.O.* v. *Windsor*, 353 U.S. 364 (1957); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957).

Even if the contrary be held, it is unthinkable that important federal constitutional and legal rights be finally decided by state courts in such manner as to bar decision by the federal court, when the plaintiffs sought the state court decision at the direction of, and only as an aid to, the federal tribunal, which held it would "be proper for the State to have the first opportunity to reinterpret and reapply and limit" the statute. *England* v. *Louisiana State Board of Medical Examiners*, 180 F. Supp. 121 (E.D. La., 1960).

The supervisory power of the United States Supreme Court is here invoked to prevent lower federal courts, called upon to vindicate federal constitutional rights, from "abnegation of judicial duty" by remitting plaintiff's to state courts and thereafter declining to adjudicate the claims independently. Such action nullifies the federal statute and the obligation imposed by the Congress to protect such federal rights. Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C., 1981 and 1983.

Such action contravenes the directions of this Court in the *Thibodeaux Case, supra.*

Any appeal from the state court to this Court, as suggested by the District Court, would have been

premature because the original case was still pending in the District Court under the retained jurisdiction.

It seems plain that correct procedure would require the federal court, after the state court proceedings are complete, to proceed to judgment on the merits. *Fallbrook Irrig. Dist.* v. *Bradley*, 164 U.S. 112 (1896); *Larson* v. *South Dakota*, 278 U.S. 429 (1929); *Green* v. *Teets*, 244 F. 2d 401 (9th Cir. 1957).

The matter is of particular general importance at this time when civil rights are developing on a broad front and the federal courts stand as the principal forum willing and able to support those rights.

Conclusion

The judgment should be reversed with directions that the three-judge District Court hear and decide the questions raised by the pleadings.

Respectfully submitted,

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Proof of Service

I, Russell Morton Brown, one of the attorneys for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of September, 1961, copies of the foregoing jurisdictional statement to the Supreme Court of the United States were served on the appellees and intervenors herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To Adams & Reese, and Robert LeCorgne, Jr., 847 National Bank of Commerce Building, New Orleans, Louisiana, attorneys for Louisiana State Board of Medical Examiners; and Phelps, Dunbar, Marks, Claverie and Sims, Hibernia Bank Building, New Orleans, Louisiana, attorneys for the Intervenors, Louisiana Medical Society.

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APPENDIX "A"

Opinion

No. 9292

CIVIL ACTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JERRY R. ENGLAND, et al., *Plaintiffs*

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, et al., *Defendants*

Before JONES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges PER CURIAM:

In this proceeding forty chiropractic examiners sought a declaration of their right to practice without complying with the requirements of the Louisiana Medical Practice Act, La. R.S. 37:1261, et seq. They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England v. Louisiana State Board of Medical Exam.*, 259 F. 2d 626, rehearing denied, 263 F. 2d 661, certiorari denied, 359 U.S. 1012, this court was convened. Applying principles recently reaffirmed by the Supreme Court in *Meridian* v. *Southern Bell T. & T. Co.*, 358 U.S. 639; *Louisiana P. & L. Co.* v. *Thibodaux, sic, City*, 360 U.S. 25; *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167; and *Martin* v. *Creasy*, 360 U.S. 219, we abstained and remitted the parties to the courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "to take such steps as may be necessary

for the just disposition of the litigation should anything prevent a prompt state court determination." *England* v. *Louisiana State Board of Medical Examiners*, Ed., *sic*, La., 180 F. Supp. 121.

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeal ultimately found against plaintiffs' contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of an opportunity to practice their healing art, did not violate any provision of the Federal Constitution. *England* v. *Louisiana State Board of Medical Exam.*, La. App., 126 So. 2d 51. On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La. Sup. Ct. No. 45,509. "No appeal was taken to the Supreme Court of the United States. Instead, plaintiffs now return to this court and ask us to proceed to adjudicate the constitutional issues. Defendants pray for dismissal of the cause."

In this posture, the case points up the dilemma of a litigant who has invoked the jurisdiction of a federal court to assert a claimed constitutional right and finds himself remitted to the state tribunals. On the one hand, in view of *Government Employees* v. *Windsor*, 353 U.S. 364, he dare not restrict his state court case to local law issues. On the other, if, as required by *Windsor*, he raises the federal questions there, well established principles will bar a relitigation of those issues in the United States District Court. *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413. Since, in the usual case, no question not already passed on by the state courts will remain, he is thereby effectively deprived of a federal forum for the adjudication of his federal claims. Cf. *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 50.

It is true that in most such cases an appeal of right to the United States Supreme Court is given, 28 U.S.C. 1257(2), but that is no more than the plaintiff would have

had even if he had never invoked the jurisdiction of the United States District Court. Moreover, there are cases where discretionary certiorari is the only available remedy from an adverse state court decision. 28 U.S.C. 1257 (3).

All this seems contrary to the principle underlying the doctrine of abstention, which has been said not to "involve the abdication of federal jurisdiction; but only the postponement of its exercise." *Harrison* v. *N.A.A.C.P.*, supra, 177. Nor does this procedure accord with the historic function of abstention to assure "that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law." *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105. Yet we can see no way out of the dilemma if the state courts must consider the constitutional issues together with local law questions.

Thus, here, since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this Court, having no power to review those proceedings, must dismiss the complaint. The proper remedy was by appeal to the Supreme Court of the United States.

Defendants' motion to dismiss granted.

WARREN L. JONES
United States Circuit Judge

J. SKELLY WRIGHT
United States District Judge

HERBERT W. CHRISTENBERRY
United States District Judge

New Orleans, Louisiana
May 31, 1961

Office-Supreme Court, U.S.
FILED
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JAMES R. BROWNING, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 7

ENGLAND, ET AL.,

Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

On Appeal from the Three-Judge United States District Court for the Eastern District of Louisiana

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. _____

ENGLAND, ET AL.,

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versus

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Appellees.

On Appeal from the Three-Judge United States District Court for the Eastern District of Louisiana

---

MOTION TO DISMISS OR AFFIRM

Appellees, Louisiana State Board of Medical Examiners, Dr. Rhett McMahon, President of the Board, and Dr. Edwin Lawson, Secretary-Treasurer of the Board, and intervenor, Louisiana State Medical Society, move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause depend are so unsubstantial as not to need further argument.

In this proceeding a number of chiropractors sought a declaration of their right to practice without comply-

ing with the requirements of the Louisiana Medical Practice Act, La. R. S. 37:1261, *et seq.* They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England v. Louisiana State Board of Medical Exam.*, 259 F. 2d 628, rehearing denied, 263 F. 2d 661, certiorari denied, 359 U.S. 1012, a three-judge court was convened.

After a hearing, the three-judge court abstained from deciding the issues and remitted the parties to the Courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "for the purpose of taking such action as may be necessary for the just disposition of the litigation, absent a prompt state court determination." *England v. Louisiana State Board of Medical Examiners*, E.D. La., 180 F. Supp. 121.

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeals for the Fourth Circuit, affirming the trial court, ultimately found against plaintiffs' contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of practicing their profession or cult, did not violate any provision of the Federal Constitution. *England v. Louisiana State Board of Medical Examiners*, La. App. 126 So. 2d 51. On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La. Sup. Ct. No. 45,509. No appeal was taken to the Supreme Court of the United States. The appellants then filed a motion in the three-judge United States District Court entitled: "Motion to Vacate Abstention Order and for a Temporary Restraining Order". The appellees filed a motion for dismissal of the cause. The matter was heard by the three-judge

court which held in effect that it had no power to review the decision of the courts of Louisiana and that appellants' proper remedy had been by appeal to the Supreme Court of the United States. This latter decision is reported in 194 F. Supp. 521, and is also quoted in full in the Appendix to appellants' "Statement as to Jurisdiction".

It hardly seems necessary to present further argument as the opinion of the three-judge court clearly points out that the issues presented on this appeal "are so unsubstantial as not to need further argument". The three-judge court refers to the cases of *Government Employees v. Windsor*, 353 U.S. 364, and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413.

In the *Windsor* case, *supra*, this Honorable Court held that the district court should retain jurisdiction of the suit until efforts to obtain appropriate adjudication in the state courts were exhausted. In the *Rooker* case, *supra*, this Honorable Court held that where a state court had passed on the federal questions, well established principles will bar a relitigation of those issues in the United States District Court.

We also refer the Court to the case of *Louisiana Power and Light Co. v. Thibodaux*, 360 U.S. 25, wherein this Honorable Court concluded:

> "The judgment of the Court of Appeals is reversed and the stay order of the District Court reinstated. We assume that both parties will cooperate in taking prompt and effective steps to secure a declaratory judgment under the Louisiana Declaratory Judgment Act, La. Rev. Stat., 1950, Tit. 13, Secs. 4231-4246, and a review of that judgment by the Supreme Court of Louisiana. **By retaining the case the District Court, of course, reserves power to take such steps as may be neces-**

sary for the just disposition of the litigation should anything prevent a prompt state court determination." (Emphasis ours)

Additionally we wish to point out that there is no substantial issue as to the constitutionality of the Louisiana Medical Practice Act, L.R.S. 37:1261, *et seq.* See the case of *England v. Louisiana State Board of Medical Exam.*, La. App. 126 So. 2d 51. Also, this Honorable Court passed on all the issues presented in the recent case of *Hitchcock v. Collenberg*, 140 F. Supp. 894, affirmed 353 U.S. 919. We also refer this Honorable Court to the following decisions: *Dantzler v. Callison*, 94 S.E. 2d 177, 352 U.S. 919; *Dent v. West Virginia*, 129 U.S. 114; *Douglas v. Noble*, 261 U.S. 165; *Graves v. Minnesota*, 272 U.S. 425; *Louisiana State Board of Medical Examiners v. Cronk*, 157 La. 321, 102 So. 415; *Louisiana State Board of Medical Examiners v. Fife*, 274 U.S. 720; *Taylor v. Oklahoma*, 352 U.S. 805; *Williamson v. Lee Optical Company*, 348 U.S. 483.

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CERTIFICATE

I, Robert E. LeCorgne, Jr., one of the attorneys for appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1961, copies of the foregoing motion to dismiss or affirm the appeal were served on the appellants herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To J. Minos Simon, 301 Congress Street, Lafayette, Louisiana, Russell Morton Brown, Suite 500, Bowen Building, 815 Fifteenth Street, N.W., Washington 5, D. C., and Floyd J. Reed, 919 Maison Blanche Building, New Orleans 16, Louisiana, Attorneys of Record for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 7

EDELAND, ET AL., *Appellants*

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., *Appellees*

Appeal from the Three-Judge United States District Court, Eastern District of Louisiana

---

BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 421

ENGLAND, ET AL., *Appellants*

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., *Appellees*.

Appeal from the Three-Judge United States District Court, Eastern District of Louisiana

---

BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

The Motion is erroneously concerned with the merits, which are in no way raised on this appeal.[1] The quotation in the first full paragraph on page 3 about the "unsubstantial" issues, is completely ficti-

[1] The law of the case is settled by the Fifth Circuit decision that the complaint states a good cause of action. *England* v. *La. State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958), *reh. den.* 263 F. 2d 661 (5th Cir. 1959), *cert. den.* 359 U. S. 1012 (1959).

tious. No such remarks were made by the lower court. The only question decided there, or raised on appeal here, is one of procedure.

Recognizing the procedural problem, the lower court plaintively chorused per curiam, "We can see no way out of the dilemma." Obviously, that dilemma requires the attention of this Court; it is plainly substantial. The merits are in no way involved, but only a question of procedure in federal constitutional courts.

The Motion to Dismiss or Affirm should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Russell Morton Brown, one of the attorneys for Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of November, 1961, copies of the foregoing Brief in Opposition to Appellee's Motion to Dismiss or Affirm were served on the appellees and intervenors herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To Robert E. LeCorgne, Jr., 1320 National Bank of Commerce Building, New Orleans 12, Louisiana; St. Clair Adams, Jr., 847 National Bank of Commerce Building, New Orleans 12, Louisiana, attorneys for Louisiana State Board of Medical Examiners; and, Ashton Phelps, 420 Hibernia Bank Building, New Orleans 12, Louisiana, attorney for Louisiana State Medical Society, Intervenor.

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IN THE

Supreme Court of the United States

October Term, 1953

No. 7

Brewer, et al., *Appellants*,

v.

Lemon, State Board of Missions, Dickerson, et al.,
Appellees.

Appeal From The Three-Judge United States District Court,
Eastern District Of Louisiana, New Orleans Division

BRIEF FOR THE APPELLANTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 7

ENGLAND, ET AL., *Appellants*,

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.
Appellees.

Appeal From The Three-Judge United States District Court, Eastern District Of Louisiana, New Orleans Division

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BRIEF FOR THE APPELLANTS

OPINION BELOW

The reasons and judgment of the three-judge district court are printed in full in the Record, pages 127-129. The decision is reported at 194 F. Supp. 521.

JURISDICTION

The judgment of the district court was entered May 31, 1961. The Statement As To Jurisdiction was filed September 19, 1961. Probable jurisdiction was noted on February 18, 1963 (R. 147). The jurisdiction of this court rests on 28 U.S.C. §§ 1253 and 2101(b).

CONSTITUTION AND STATUTES INVOLVED

U. S. Constitution.

Article III, Section 1. Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article III, Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made or which shall be made under their Authority; * * *.

Amendment Fourteen: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Civil Rights Act, 42 U.S.C. §§ 1981 and 1983, and the jurisdictional authority of the district court, 28 U.S.C. § 1343, are set forth in the appendix, infra.

QUESTION PRESENTED

Where a three-judge federal district court, asked to invalidate a state statute under the United States Constitution, applies the doctrine of abstention, remitting plaintiffs to the state court while retaining jurisdiction, does the state court decision, on all state and federal issues in the case, bar consideration of federal constitutional issues by the three-judge district court, even though the federal Court of Appeals had previously held the complaint made out a prima facie case under the Fourteenth Amendment.

STATEMENT OF THE CASE

Plaintiffs, appellants herein, a large number of chiropractors, brought this action in the United States District Court for the Eastern District of Louisiana, claiming that:

(a) the Louisiana Medical Practice Act deprives them of their civil rights, privileges and immunities, without due process of law under the Constitution and laws of the United States;

(b) the Louisiana State Board of Medical Examiners administers the Act with the deliberate intention of depriving appellants of their rights, privileges and immunities under the Constitution and laws of the United States.

Appellants sought the convening of a three-judge court, praying injunctive relief under 28 U.S.C. 2281 (and 2284), invoking the federal Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C. §§ 2201 and 2202.

The district court, on June 20, 1957, dismissed the action on motion of defendants, holding, "Since no serious (sic) federal question, not heretofore decided by the Supreme Court of the United States is presented, in the absence of diversity of citizenship, this court is without jurisdiction" (R. 20).

On appeal, the Fifth Circuit reversed and remanded the cause September 9, 1958, for further proceedings (R. 23), holding on rehearing (R. 40) the complaint made out "a prima facie case" (R. 60). *England* v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958), *reh. den.* 263 F. 2d 661, 674 (5th Cir. 1959), *cert. den.* 359 U.S. 1012 (1959).

A three-judge federal district court convened and heard argument on plaintiffs' motion for summary judgment, supported by voluminous uncontroverted affidavits, exhibits and appropriate supporting data. On January 5, 1960, that court applied the doctrine of abstention, remitting plaintiffs to the state courts to secure a current decision on the statute in question, meanwhile retaining jurisdiction of the cause. *England* v. *Louisiana State Board of Medical Examiners,* 180 F. Supp. 121 (E.D. La. 1960). (R. 116, 121)

Plaintiffs immediately sued in the state courts, and adverse decision was affirmed on appeal. *England* v. *Louisiana State Board of Medical Examiners,* 126 So. 2d 51, *reh. den.*, Jan. 30, 1961. The Supreme Court of Louisiana declined to review, stating, "The judgment of the Court of Appeal is correct". La. Supreme Court, Feb. 15, 1961, 126 So. 2d 51. (R. 124)

Appellants then moved the three-judge federal district court to vacate its order of abstention and proceed with the cause (R. 122). Defendants moved to dismiss the action on the ground that the final determination by the state courts deprived the federal court of jurisdiction (R. 126). This motion was granted by the district court on May 31, 1961, holding (R. 129), "* * * since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this court, having no power to review those proceedings, must dismiss the complaint. The proper remedy was by appeal to the Supreme Court of the United States." *England* v. *Louisiana State Board of Medical Examiners,* 194 F. Supp. 521 (E.D. La. 1961). Such is the decision now before this Court.

ARGUMENT

I. The Trial Court Erred in Dismissing the Complaint on the Ground it Could Not Review a State Court Decision Holding Against the Federal Constitutional Rights Asserted; This Is Particularly True Since the Federal Court of Appeals Had Previously Held the Complaint Stated a Prima Facie Case.

The basic premise here is that the complaint makes out a prima facie case of constitutional rights violated by state action, under the earlier decision of the Fifth Circuit Court of Appeals.[1] The stated purpose of the abstention order (R. 116) was to see if it was really necessary to construe the federal Constitution and apply it to the state statute, a course to be avoided if possible; or would the state court, on one of the grounds suggested, render a decision which would make such a course unnecessary. (R. 119-120).

When the state court decision had been rendered, it remained for the federal court to decide the questions of federal law.

(a) Abstention is Only a Postponement of Federal Decision. Never an Evasion or Denial of Adjudication.

The district court said of its order staying proceedings (R. 120) "it would also be proper for the state to have the first opportunity to reinterpret and reapply and limit, if need be," the statute in issue. It was observed that the state court might so decide the case as to "end this controversy by a determination that chiropractors are not governed by the statute" (R. 119); or a limiting interpretation might "render

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[1] *England* v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958), *reh. den.*, 263 F. 2d 661 (5th Cir. 1959), *cert. den.*, 359 U.S. 1012 (1959).

unnecessary a testing of the statute by the Constitution." (R. 120)[2] That is the only reason why the district court abstained.

Acknowledging the delay involved, the lower court said (R. 120), "one who seeks to overturn precedents must be prepared for delay and expense." Plainly the court implied that the state court action would delay, not defeat, a remedy in the federal forum.

Plaintiffs and their counsel never at any time entertained the faintest hope of relief at the hands of the state courts. Precisely that dismal prospect motivated the original resort to the federal court—lo, some six years ago.

Under the circumstances, plaintiffs showed a proper respect for the three-judge district court, and acquiesced in its purpose to secure a state court opinion on the matter before involving the federal Constitution.

Under no circumstances did this Court authorize or direct the district courts to abjure their constitutional functions by abstaining. On the contrary, the decisions cited by the lower court (R. 117) clearly pointed to the state court proceeding as a temporary detour leading back to the federal court, and not as a permanent cul-de-sac where fundamental federal rights could be lost in limbo.

In plainest language, the district court's reference to *Louisiana Power and Light Co.* v. *Thibodaux*, 360

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[2] This accords with the settled rule that the court should not "render a constitutional decision unnecessarily." *Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639, 641 (1959); *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U.S. 101, 105 (1944).

U.S. 25 (1959), with Justice Frankfurter speaking for the Court, distinctly promised future action in the federal forum (p. 29):

> This course [remitting parties to state courts] *does not constitute abnegation of judicial duty.* On the contrary, it is a wise and productive discharge of it. *There is only the postponement of decision for its fruition.* Eventually the District Court will award compensation if the taking is sustained. If for some reason a declaratory judgment is not promptly sought from the state courts and obtained within a reasonable time, *the District Court, having retained complete control of the litigation,* will doubtless assert it to decide also the question of the meaning of the state statute. (Italics supplied)

The dilemma plaguing the court below at this time is of its own making; it has plainly misconceived its proper function to be, not a constitutional court, but a court of review to pass upon the state court's decision (R. 129). This indeed is abnegation of judicial duty! While it had retained jurisdiction of the cause, and "complete control of the litigation" (Frankfurter, J., *supra*), the district court said it was barred from sitting in review on the state court's decision; that these appellants should have taken an "appeal" (sic) to this Supreme Court from the adverse holding in the state court (R. 129).[3]

Patently, the district court's action was an exercise in futility, stripping itself of constitutional and statu-

[3] At that date, May 31, 1961, when the district court dismissed the complaint, the time for "appeal" (or certiorari) had elapsed, since the judgment of the state court was rendered February 15, 1961 (R. 124).

tory function: if the state court decision should be favorable to the plaintiffs, there would be no need for further federal court action; if it be adverse, plaintiffs would be barred from returning. So, the district court in this case annulled the Civil Rights Act, Title 42 U.S. Code §§ 1981, 1983; and abdicated its own authority under the Constitution (Article III, Section 2) and federal statute (Title 28 U.S. Code § 1343(3)).

This error is neatly highlighted by the decision in *Goss* v. *State of Illinois,* 204 F. Supp. 268 (N.D. Ill. 1962). A radio announcer was found guilty in state courts of contempt in connection with comments made over the air about a pending divorce case. After the judgment had been affirmed in the highest state court, and certiorari denied by this Court, the announcer, threatened with arrest, came into the United States district court, asserting civil rights under the Fourteenth Amendment and the statutes here involved. Directly rejecting the argument that its consideration of the constitutional rights asserted would amount to an improper "review" of the state court decision, the district court said (p. 271):

> This contention is in error. Where a constitutional question is raised out of the act of a state officer depriving or seeking to deprive a person of a constitutional right, *this Court has original jurisdiction and primary responsibility* within the historic context of the relationship of Federal Courts to the states. (Italics supplied)

After remission in *Tribune Review Pub. Co.* v. *Thomas,* 120 F. Supp. 362 (D. Pa. 1954), and the district court had no problem and continued its function in the same litigation 153 F. Supp. 486 (D. Pa. 1957), *affirmed* 254 F. 2d 883 (3rd Cir. 1958).

In *Spector Motor Service, Inc.* v. *O'Connor*, 340 U.S. 602 (1951), this court reviewed for the second time an action to invalidate a state statute. The first time it reversed and ordered remission to the state courts, while jurisdiction was retained.[4] After the state court decision, plaintiff returned to the federal district court, and in due course to this Court. Anent the federal jurisdiction to proceed after abstaining in favor of the state court, this Court expressly upheld the judicial duty (p. 605):

> The United States District Court had jurisdiction over this case in the first instance because of the uncertainty of the adequacy of a remedy in the state courts, and *it did not lose that jurisdiction* by virtue of the later clarification of the procedure in the courts of Connecticut. (Italics supplied)

The district court here cited *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167 (1959), where this Court pointed out abstention involves no abdication of jurisdiction but only postponement of its exercise. Following the state court decision in that case, one of the parties plaintiff applied for certiorari to this Court, while another plaintiff returned to the district court where its case was pending at the time this Supreme Court granted certiorari. *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963). Explaining the effect of the abstention doctrine, this Court said (p. 427):

> We meant simply that the District Court had properly retained jurisdiction, since *a party has the right to return to the District Court*, after obtaining the authoritative state court construction for which the court abstained, *for a final determination of his claim.* (Italics supplied)

In the *Button Case* this Court held there was no want of jurisdiction to review the state court decision on

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[4] Note 2, supra, *Spector Motor Service, Inc.*, v. *McLaughlin.*

certiorari, since plaintiffs showed they had elected to seek a complete and final adjudication in the state courts (p. 428) "by making no reservation to disposition of the entire case by the state courts, and *by coming here directly on certiorari.*" (Italics supplied). In a nutshell, the application for certiorari represented a waiver of the "right" so explicitly recognized in the quotation above, "to return to the District Court * * * for a final determination of his claim."

Of course, in the case at bar, no such waiver took place. By no act or deed did appellants submit the matter for final decision by the state courts; they sought only to dispose of a prerequisite to federal adjudication, to wit, an interpretation of the meaning and application of the state statute. On this subject the state court's decision is final. *N.A.A.C.P.* v. *Button, supra,* at page 432; *Hebert* v. *Louisiana,* 272 U.S. 312 (1926); *Dorchy* v. *Kansas,* 264 U.S. 286, 290 (1924); *Chas. Wolff Packing Co.* v. *Court of Ind. Relations,* 267 U.S. 552, 582 (1925).

But the judicial duty to decide questions of these federal constitutional rights has been placed on the federal courts (Title 28 U.S. Code § 1343). *Goss* v. *Illinois, supra.* While this Court granted certiorari in the *Button Case, supra,* it expressly recognized the right to return to the District Court. When these appellants sought to exercise that right, they found the door slammed shut, their federal constitutional rights completely scuttled.[5]

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[5] This would completely abrogate the U. S. Constitution as "the supreme Law of the Land" so far as the duty of a post-abstention district court is concerned. It is not considered necessary or desirable to discuss Article VI of the Constitution at this point.

This technique applies the rule of res judicata to the parties, but it thoroughly nullifies the decision of the Fifth Circuit holding the complaint states a good cause of action under the Fourteenth Amendment.[6] That decision stands unreversed. It is undeniably the law of the case, yet deliberately ignored by the district court in favor of the state court decision.

The lower court plainly misconceived both its own function as a constitutional court, and the true import of the abstention concept as a detour and not a dead-end for federal rights.

(b) Federal Court Jurisdiction in a Proper Case is Not Permissive or Discretionary, But Mandatory

It seems elementary that the district court was utterly powerless to remit the case to the state court, and thus be rid of its own responsibility. Never has the doctrine of abstention been so construed.

Chief Justice Marshall's statement in *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821), is particularly applicable to the district courts created by Congress under Article III, section 1, of the Constitution:

> We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.

This view follows directly from the existence of a constitutional right[7] for which there is a remedy under the Constitution[8] and federal statute.[9] The power to

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[6] *England* v. *Louisiana State Board of Medical Examiners*, note 1 *supra*.

[7] E.g. due process, equal protection, under the 14th Amendment.

[8] Article III, sections 1, 2.

[9] Title 28 U.S. Code § 1343.

redress thus entrusted to federal courts is not permissive or discretionary, but mandatory, i.e., "within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 U.S.C. § 1343(3)." *Baker* v. *Carr*, 369 U.S. 186, 200-204 (1962), and cases cited. In *Willcox* v. *Consolidated Gas Co.*, 212 U.S. 19, 40 (1909), this Court gave short shrift to a suggestion that federal jurisdiction is discretionary (p. 394):

> On the contrary, there was no discretion or comity about it. When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction. * * * The right of a party to choose a Federal court where there is a choice cannot be properly denied.

This cause of action is given by Title 42 U.S. Code § 1983, Rev. Stat. sec. 1979, which was derived from the Civil Rights Act of April 20, 1871, 17 Stat. 13. The Court's jurisdiction, now Title 28 U.S. Code § 1343, was specifically defined to embrace remedies for invasion of civil rights: "such proceeding to be prosecuted in the several district or circuit courts of the United States" (17 Stat. 13). Clear is the intent of Congress that adjudication of federal civil rights is committed to the federal judiciary and not to state courts. See Stone, J., in *Hague* v. *C.I.O.*, 307 U.S. 496, 525 (1939). Completely repugnant to all concepts of our federalism is the suggestion that the lower courts may, in their discretion, decide constitutional questions, or remit them to the state courts for final decision.

On the contrary, the federal courts, high and low, must, when properly called upon, perform their con-

stitutional duties. *Evers* v. *Dwyer,* 358 U.S. 202 (1958); *Fallbrook Irrigation District* v. *Bradley,* 164 U.S. 112, 154 (1896); *Willcox* v. *Consolidated Gas Co.,* 212 U.S. 19, 40 (1909); *Romero* v. *Weakley,* 226 F. 2d 399, 401 (9th Cir. 1955); *Crown Kosher Super Market of Mass. Inc.* v. *Gallagher,* 176 F. Supp. 466, 471 (D. Mass. 1959).

At this late date it plainly would be unnecessary to re-plow the ground so thoroughly tilled in *Martin* v. *Hunter's Lessee,* 14 U.S. (1 Wheat.) 304 (1816); *Cohens* v. *Virginia,* 19 U.S. (6 Wheat.) 264 (1821); *Ableman* v. *Booth,* 62 U.S. (21 How.) 506, 514-523 (1859), and related cases bearing upon federal judicial powers. The decisions of this Court on abstention, referred to herein, passim, allow no room for stultification of federal constitutional rights by such decisions as the one here under review.[10] This Court said in so many words, in *Fallbrook Irrigation District* v. *Bradley, supra,* at page 154:

> "If the act of the state legislature as construed by its highest court conflicts with the Federal Constitution or with any valid act of Congress, it is the *duty of the Circuit Court* and of this court to so decide, and to thus enforce the provisions of the Federal constitution." (Italics supplied)

No other evaluation of the federal-state relationship can possibly preserve the operating vitality of the federal Constitution. This vitality depends completely upon its interpretation by federal courts independ-

[10] The court below said, in dismissing this case (R. 128), "since, in the usual case, no question not already passed on by the state courts will remain, he (plaintiff) is thereby effectively deprived of a federal forum for the adjudication of his federal claims."

ently of any state court decision. See Taft, C.J., in *Larson* v. *So. Dakota*, 278 U.S. 429, 433 (1929).

The authorities cited by the district court as ground for dismissal offer no precedent for such a result; they indicate only a misapprehension of this Court's views on the occasion and purpose of abstaining.

CONCLUSION

The district court erred in dismissing the complaint, thereby refusing to perform its judicial duty as required by the Constitution of the United States and federal statute. It wholly misconceived the doctrine of abstention as a bar to, rather than a postponment of, federal adjudication.

It is submitted the judgment below should be reversed with directions to afford the parties a hearing, and proceed to independent judgment on the constitutional issues.

Respectfully submitted,

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APPENDIX

Civil Rights Act, Title 42 U. S. Code

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. § 1977.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

Title 28, U. S. Code

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

• • •

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, § 121, 71 Stat. 637.

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BRIEF FOR THE APPELLEES.

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LOUISIANA PRINTING CO., INC., NEW ORLEANS

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BRIEF FOR THE APPELLEES.

May It Please the Court:

In answer to the brief filed for appellants we are essentially reiterating our motion to dismiss or affirm. Appellees, Louisiana State Board of Medical Examiners, Dr. Rhett McMahon, President of the Board, and Dr. Edwin Lawson, Secretary-Treasurer of the Board, and intervenor, Louisiana State Medical Society, move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause

depend are so unsubstantial as not to need further argument.

In this proceeding a number of chiropractors sought a declaration of their right to practice without complying with the requirements of the Louisiana Medical Practice Act, La. R.S. 37:1261, *et seq.* They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England vs. Louisiana State Board of Medical Examiners*, 259 F. 2d 628, *reh. den.*, 263 F. 2d 661, *cert. den.*, 359 U.S. 1012, a three-judge court was convened.

After a hearing, the three-judge court abstained from deciding the issues and remitted the parties to the courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "for the purpose of taking such action as may be necessary for the just disposition of the litigation, absent a prompt state court determination." *England vs. Louisiana State Board of Medical Examiners*, 180 F. Supp. 121 (E.D. La. 1960).

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeals for the Fourth Circuit, affirming the trial court, ultimately found against plaintiff's contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of practicing their profession or cult, did not violate any provision of the Federal Constitution. *England vs. Louisiana State Board of Medical Examiners*, 126 So. 2d 51 (La. App. 1961). On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La.

Sup. Ct. No. 45,509. No appeal was taken to the Supreme Court of the United States. The appellants then filed a motion in the three-judge United States District Court entitled: "Motion to Vacate Abstention Order and for a Temporary Restraining Order". The appellees filed a motion for dismissal of the cause. The matter was heard by the three-judge court which held in effect that it had no power to review the decision of the courts of Louisiana and that appellants' proper remedy had been by appeal to the Supreme Court of the United States. This latter decision is reported in 194 F. Supp. 521, and is also quoted in full in the Appendix to appellants' "Statement as to Jurisdiction".

It hardly seems necessary to present further argument as the opinion of the three-judge court clearly points out that the issues presented on this appeal "are so unsubstantial as not to need further argument". The three-judge court refers to the cases of *Government Employees vs. Windsor*, 353 U.S. 364, and *Rooker vs. Fidelity Trust Co.*, 263 U.S. 413.

In the *Windsor* case, *supra*, this Honorable Court held that the district court should retain jurisdiction of the suit until efforts to obtain appropriate adjudication in the state courts were exhausted. In the *Rooker* case, *supra*, this Honorable Court held that where a state court had passed on the federal questions, well established principles will bar a relitigation of those issues in the United States District Court.

We also refer the Court to the case of *Louisiana Power and Light Co. vs. Thibodaux*, 360 U.S. 25, wherein this Honorable Court concluded:

> "The judgment of the Court of Appeals is reversed and the stay order of the District Court

> reinstated. We assume that both parties will cooperate in taking prompt and effective steps to secure a declaratory judgment under the Louisiana Declaratory Judgment Act, La. Rev. Stat., 1950, Tit. 13, Secs. 4231-4246, and a review of that judgment by the Supreme Court of Louisiana. **By retaining the case the District Court, of course, reserves power to take such steps as may be necessary for the just disposition of the litigation should anything prevent a prompt state court determination.**" (Emphasis ours.)

Since the filing of our brief there have been a number of developments by decisions of this Court. In particular we refer to *N.A.A.C.P. vs. Button*, 371 U.S. 415 (1963), which is highly relied upon by the appellants. We wish to direct particular attention to the fact that the orignial decision in this case, *Harrison vs. N.A.A.C.P.*, 360 U.S. 167 (1959), was vacated and the cause remanded with instructions for the district court to abstain in order to afford the state courts an opportunity to construe the statutes in question. On review of the subsequent state decision this Court stated:

> "Where, however, the party remitted to the state courts elects to seek a complete and final adjudication of his rights in the state courts, **the District Court's reservation of jurisdiction is purely formal, and does not impair our jurisdiction to review directly an otherwise final state court judgment.** *Lassiter vs. Northampton County Board of Elections*, 360 U.S. 45, 3 L. ed. 2d 1072, 79 S. Ct. 985. We think it clear that petitioner made such an election in the instant case, by seeking from the Richmond Circuit Court 'a binding adjudication' of all its claims and a permanent injunction as well as declaratory relief, by making no reservation to the disposition of the entire case by the state courts, and by coming here directly on certiorari. Therefore, the judgment of the Vir-

> ginia Supreme Court of Appeals was final, and the case is properly before us. 371 U.S. 415, 9 L. ed. 2d at 415. (Emphasis ours.)

In the present action the three-judge federal court adopted the doctrine of abstention and in doing so followed the language of this Court by stating that they only retained jurisdiction for a just disposition of the litigation should anything prevent a state court determination. As a matter of fact the state court acted most promptly in the matter and a decision was handed down by the court of appeals and affirmed by the State Supreme Court in less than a year. *England vs. Louisiana State Board of Medical Examiners*, 126 So. 2d 51 (La. App. 1961), *reh. den.* Jan. 30, 1961, *cert. den.* Feb. 15, 1961, La. Supreme Court, Docket No. 45,509.

In these circumstances we suggest that the federal district court, having announced the doctrine of abstention, could not under any circumstances act as a court of appeals over the decision of the State Supreme Court.

The doctrine of abstention must mean one thing or another. Either it means nothing or its means that the federal district court should be bound by the decision of the highest court in the state.

In addition to the authorities we have already cited we wish to direct the attention of the Court to the following decisions decided since the filing of our last brief. See *United Gas Pipe Line Co. vs. Ideal Cement Co.*, 369 U.S. 134 (1962); *Two Guys From Harrison-Allentown vs. McGinley*, 366 U.S. 582 (1961); *Metlakatla Indian Community vs. Egan*, 363 U.S. 555 (1960); *Clay vs. Sun Ins. Office, Ltd.*, 363 U.S. 207 (1960).

CONCLUSION

We wish to conclude by stating that there either is a doctrine of abstention or that it does not exist and if the federal district court decides to abstain and refers the matter to the state courts there is no reason for them to have the right to act as a court of appeal. The legal remedy of the appellants in this case, if any they had, was to appeal direct to this Court from the decision of the Louisiana Supreme Court.

All of which is respectfully submitted.

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CERTIFICATE

I, Robert E. LeCorgne, Jr., one of the attorneys for appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of September, 1963, copies of the foregoing brief were served on the appellants herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To J. Minos Simon, 301 Congress Street, Lafayette, Louisiana, Russell Morton Brown, Suite 500, Bowen Building, 815 Fifteenth Street, N.W., Washington 5, D. C., and Floyd J. Reed, 919 Maison Blanche Building, New Orleans 16, Louisiana, Attorneys of Record for Appellants.

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